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# **SUBCOMMITTEE ON PUBLIC SAFETY APPROPRIATIONS**

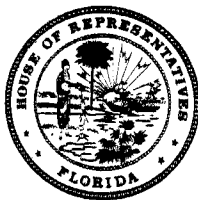
Gus Bilirakis, Chair

## **MEETING PACKET**

April 2, 2004

10:15 a.m. – 1:00 p.m.

12 House Office Building



# Florida House of Representatives

Tallahassee, Florida

32399-1300

**Johnnie Byrd, Speaker**

**Subcommittee on Public Safety Appropriations**

**Gus Bilirakis**  
Chair

**Gus Barreiro**  
Vice Chair

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## AGENDA

Friday, April 2, 2004

10:15 a.m. – 1:00 p.m.

12 House Office Building

- I. Call to Order
- II. Roll Call
- III. Chairman's Opening Remarks
- IV. Consideration of the following bill (s):
  - HB 85 Law Enforcement *by Needelman*
  - HB 87 CS Sexual Offenders *by Kravitz*
  - HB 101 CS Fire Prevention and Control *by Quinones*
  - HB 123 Assault or Battery on Officials *by Cretul*
  - HB 523 CS Video Voyeurism *by Stargel*
  - HB 545 CS Selection of Construction Managers for State Correctional Facilities Construction Projects *by Brown*
  - HB 719 Law Enforcement Officers, Correctional Officers, and Correctional Probation Officers *by Roberson*
  - HB 761 CS Possession of Firearms, Electric Weapons or Devices, or Concealed Weapons by Persons Found to Have Committed Certain Delinquent Acts *by Wishner*
  - HB 1641 CS Designation and Registration of Sexual Predators and Sexual Offenders *by Adams*
- V. Closing Remarks
- VI. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 85      Sunshine Security Act  
**SPONSOR(S):** Needelman  
**TIED BILLS:** none      **IDEN./SIM. BILLS:** none

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Bond</u>	<u>Everhart</u>
2) <u>Public Safety &amp; Crime Prevention</u>	<u>18 Y, 0 N</u>	<u>Kramer</u>	<u>De La Paz</u>
3) <u>Public Safety Appropriations</u>	<u>                    </u>	<u>Davis</u>	<u>DeBeaugrine</u>
4) <u>Appropriations</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5) <u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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### SUMMARY ANALYSIS

Currently, there are 26 separate law enforcement commands employing approximately 6,200 individuals dispersed among the departments, agencies, universities and community colleges of the state.

This bill creates a five-person Law Enforcement Agency Consolidation Task Force to explore whether the state should consolidate some or all of these law enforcement positions under one department for the purpose of a unified command. Two members are to be appointed by the Governor, one by the Attorney General, and one each by President of the Senate and the Speaker of the House. The task force must issue its report prior to the 2005 session.

This bill appears to have a minimal, nonrecurring fiscal impact upon state government. This bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Currently, state law enforcement responsibilities and law enforcement positions are dispersed among the departments, agencies, universities, and community colleges of the state. State agencies with law enforcement units are as follows:<sup>1</sup>

Agency	Sworn Employees	Non-Sworn Employees	Law Enforcement Managers	Other Employees
Department of Agriculture and Consumer Services	213	79	1	
Department of Business and Professional Regulation	140	1	1	
Department of Children and Families	2	38		
Department of Corrections		6		
Department of Environmental Protection	134	2	3	
Department of Financial Services	188	60	1	
Department of Highway Safety and Motor Vehicles	1,586	286	14	
Department of Juvenile Justice	4	10		
Department of Law Enforcement	426	197	2	1,193
Department of Legal Affairs	39	43	1	
Department of Transportation	208	10		
Florida Fish and Wildlife Conservation Commission	669	69	17	
Florida School for the Deaf and the Blind	7	1	1	
<b>TOTALS</b>	<b>3,616</b>	<b>802</b>	<b>41</b>	<b>1,193</b>

In addition, the 11 state universities have 462 authorized law enforcement positions;<sup>2</sup> and three of the 28 community colleges have law enforcement units, employing a total of 51 sworn police officers.<sup>3</sup>

<sup>1</sup> Chart provided by the Department of Management Services on December 2, 2003.

<sup>2</sup> Information from Division of Colleges and Universities, December 10, 2003.

## Effect of Bill

This bill creates a Law Enforcement Agency Consolidation Task Force charged with investigating the issue of consolidating state law enforcement personnel under a unified command. The task force membership consists of five members:

- Two persons from private industry who have expertise in corporate mergers are to be appointed by the Governor;
- The Attorney General or the Attorney General's designee;
- A member of the Senate appointed by the Senate President; and
- A member of the House of Representatives appointed by the Speaker of the House.

Members are to be selected no later than July 10, 2004. The task force is to meet for the first time no later than July 15, 2004, at which time the task force will appoint its chair from its members.

Three members constitute a quorum. The task force is subject to public record requirements found in chapter 119, F.S., and public meeting requirements found in s. 286.011, F.S. The public in attendance at a meeting must be given an opportunity to participate in the meeting. The Executive Office of the Governor is required to provide timely notice of the time and place of task force meetings to those persons requesting notice. The task force members do not receive compensation for their membership on the task force, but receive reimbursement for per diem and travel expenses.

The task force is to investigate and report to the Legislature on the effect of consolidating state law enforcement personnel under a unified command. Its initial report is due no later than 45 days prior to the first day of the 2005 regular legislative session.<sup>4</sup> Its final report is due no later than 30 days prior to the first day of the 2005 regular legislative session.<sup>5</sup>

In these reports, the task force must:

- Identify all law enforcement functions and duties of personnel positions that exist in each state agency;
- Identify all statutory provisions assigning law enforcement duties to state agencies;
- Identify the options considered by the task force for consolidation of law enforcement functions, duties, and personnel, and identify the costs for consolidation under each option;
- Determine whether consolidation of all law enforcement functions, law enforcement personnel, or both, would prove more effective and efficient than the current distribution of law enforcement activities and sworn personnel. This determination must include a cost analysis and comparison; and
- If the determination is made that consolidation is more effective and efficient than the current distribution of law enforcement activities and sworn personnel, recommend proposed legislation based upon the recommended best option for consolidating all law enforcement functions, law enforcement personnel, or both. This recommendation must include provision for any necessary restructuring of agencies as a result of the recommended reorganization.

Agencies are to cooperate with the task force in the performance of its duties. Each agency that has law enforcement functions or sworn law enforcement personnel are specifically required to produce a

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<sup>3</sup> Pensacola Community College has 15 full-time officers, Santa Fe Community College has 20 full-time and 1 part-time officers, and Tallahassee Community College has 12 full-time and 3 part-time officers. Information provided by the Division of Community Colleges, December 3, 2003.

<sup>4</sup> Saturday, January 22, 2004.

<sup>5</sup> Sunday, February 6, 2005.

report no later than August 1, 2004 that provides the authority the agency relies upon for the performance of the responsibilities or the employment of sworn personnel.

The bill takes effect upon becoming law. The task force will be abolished by its own terms on July 1, 2005.

**C. SECTION DIRECTORY:**

**Section 1.** Creates the task force and specifies its duties.

**Section 2.** Provides an effective date of "upon becoming law."

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

None.

**2. Expenditures:**

Task force members will not receive any salary, but must be reimbursed for travel and per diem. Members will be required to meet, and thus will incur travel and per diem costs. The bill does not specify who pays for travel and per diem expenses; thus, such expenses will be the responsibility of the agency appointing such persons to the task force.

House staff estimates a non-recurring, fiscal impact of approximately \$18,000 to the state General Revenue Fund. This estimate assumes costs of \$16,000 for travel and per diem, or \$500 per person per meeting. [Five panel members and three support staff, for four meetings.] Publication and other staff support costs are estimated at \$2,000.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The due dates for the draft report and the final report both fall on weekends. The two reports are only 15 days apart, and contain the same information; it is unclear why both are necessary.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.



HB 0085

2004

A bill to be entitled

An act relating to law enforcement; creating the Sunshine Security Act; creating the Law Enforcement Agency Consolidation Task Force; providing for the appointment of members; providing for duties; providing for a report addressing the effects of the consolidation of all sworn law enforcement functions in the state; providing for future repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act shall be known by the popular name the "Sunshine Security Act."

Section 2. Law Enforcement Agency Consolidation Task Force.--

(1)(a) There is created within the Executive Office of the Governor the Law Enforcement Agency Consolidation Task Force. Members of the task force shall be appointed no later than July 10, 2004. The task force shall be composed of:

1. Two representatives from private industry who have expertise in corporate mergers, appointed by the Governor.

2. The Attorney General or his or her designee.

3. A member of the Senate, appointed by the President of the Senate.

4. A member of the House of Representatives, appointed by the Speaker of the House of Representatives.

(b) The first meeting of the task force shall be held no later than July 15, 2004, at which time the members shall select by majority vote a chair from among its members. All other recommendations of the task force shall be by majority vote of

HB 0085

2004

those members in attendance. Three members of the task force shall constitute a quorum. The task force is subject to the requirements of chapter 119, Florida Statutes. All meetings of the task force shall be in accordance with s. 286.011, Florida Statutes, and the public in attendance at any meeting shall be given the opportunity to participate. The Executive Office of the Governor shall ensure that those persons who request notification of the time and place of any meeting of the task force, including its initial meeting, shall receive such notice in a timely fashion.

(c) Members of the task force shall serve without compensation. Members are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, Florida Statutes.

(d) The Executive Office of the Governor shall provide staff support for the task force within existing appropriations.

(2)(a) The task force shall meet for the purpose of studying the effects of consolidating law enforcement functions in state agencies and commissions under a unified command. The task force shall submit a preliminary report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than 45 days prior to the first day of the 2005 Regular Session of the Legislature. The final report shall be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than 30 days prior to the first day of the 2005 Regular Session of the Legislature.

(b) The preliminary and final report shall:

1. Identify all law enforcement functions and duties of personnel positions that exist in each state agency or

HB 0085

2004

commission.

2. Identify all statutory provisions assigning law enforcement duties to state agencies or commissions.

3. Identify the options considered by the task force for consolidation of state law enforcement functions, duties, and personnel and identify costs for consolidation under each option considered.

4. Determine whether consolidation of any law enforcement functions or law enforcement personnel, or both, would prove more effective and efficient. Such determination shall include a cost analysis and comparison, with supporting analysis.

5. If the determination is made that consolidation is more effective and efficient, recommend proposed legislation based upon the recommended best option for consolidating any law enforcement functions or law enforcement personnel, or both. Such proposed legislation shall include, but not be limited to, provision for any necessary restructuring of state agencies or commissions as a result of the recommended reorganization.

(3)(a) Each state agency or commission shall fully cooperate with the task force in the performance of its duties under this section.

(b) Each state agency or commission that has been assigned law enforcement functions or employs sworn law enforcement personnel shall provide a report to the task force that identifies each section of law upon which that agency or commission relies for authority to perform law enforcement functions and employ sworn law enforcement officers. This report shall be submitted to the task force no later than August 1, 2004.

(4) The task force shall sunset on July 1, 2005.

HB 0085

2004

91        Section 3.   This act shall take effect upon becoming a law.

92

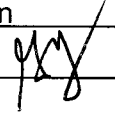



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 87 w/CS Sexual Offenders

**SPONSOR(S):** Kravitz

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 120; SB 146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice</u>	<u>26 Y, 0 N w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Public Safety &amp; Crime Prevention</u>	<u>18 Y, 0 N</u>	<u>Kramer</u>	<u>De La Paz</u>
3) <u>Education K-20</u>	<u>26 Y, 0 N w/CS</u>	<u>Carlson</u>	<u>Bohannon</u>
4) <u>Public Safety Appropriations</u>	<u></u>	<u>Davis</u> 	<u>DeBeaugrine</u> 
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

HB 87 provides that a conditional releasee who is subject to the provisions of this bill may not relocate to a residence that is within 2 miles of a school or within 1,000 feet of a public school bus stop. If, on the effective date of the bill, any public school bus stop is located within 1,000 feet of the existing residence of a releasee, the district school board will be required to relocate the school bus stop. After the effective date of the bill, a district school board will be prohibited from establishing a school bus stop within 1,000 feet of the existing residence of a releasee.

The bill requires the Department of Corrections to notify affected school districts of the residence of a releasee 30 days before the release of an offender on conditional release and within 30 days after that releasee relocates.

According to the Department of Corrections, there are 33 releasees as of July 1, 2003 who would be subject to the provisions of the bill.

The bill also makes it unlawful for any person who has been convicted of one of a list of specified sexual offenses against a victim under the age of 16 to reside within 2 miles of any school or 1,000 feet of any day care center, park or playground. This provision applies only to sexual offenses that occur after October 1, 2004.

The effective date of the bill is October 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0087d.ap.doc

**DATE:** March 30, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill places permanent geographic limitations on where certain sexual offenders may reside and provides additional restrictions on where offenders on conditional release are permitted to reside for the duration of their supervision.

#### B. EFFECT OF PROPOSED CHANGES:

Conditional release program: Section 947.1405, F.S., creates the conditional release program. This program requires an inmate convicted of repeated violent offenses that is nearing the end of his or her sentence to be released under close supervision.<sup>1</sup> The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.<sup>2</sup> The Department of Corrections supervises the offender while on conditional release.

For inmates convicted of certain sexual offenses<sup>3</sup> or offenses against children committed after October 1, 1995, who are subject to conditional release, section 947.1405(7)(a), F.S., also requires the Commission to impose the following conditions, in addition to any other terms and conditions it imposes:

1. Mandatory curfew;
2. *If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate;*
3. Participation in a sex offender treatment program;
4. Prohibition on contact with the victim;
5. Prohibition on unsupervised contact with children if certain conditions are met;
6. Prohibition on working at any school, day care center, park, playground, or other place where children congregate if the victim was under 18;
7. Prohibition on the possession of pornographic or sexually stimulating materials;
8. Submission of a DNA sample to the Florida Department of Law Enforcement;
9. Restitution to the victim; and
10. Submission to warrantless searches by the releasee's probation officer of the releasee's person, residence, or vehicle.

If the releasee successfully completes the conditional release program, the inmate is no longer supervised by the court or by the Department of Corrections. If a person on conditional release violates the conditions

<sup>1</sup> Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one a list of violent offenses including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as a habitual offender, a violent habitual offender or a violent career criminal; 3) inmates who were found to be a sexual predator. s. 947.1405(2), F.S

<sup>2</sup> The length of supervision cannot exceed the maximum penalty imposed by the court. (see s. 947.1405(6)).

<sup>3</sup> Offenses include sexual battery (s.794), lewd or lascivious offenses (s.800.04); sexual performance by a child (s. 827.071) and selling or buying of minors (s. 847.0145).

of his or her release, the violation may be referred to the Parole Commission. The releasee is entitled to a hearing before the Parole Commission or its hearing officer.<sup>4</sup> After a hearing, the Parole Commission may revoke the conditional release and return the releasee to prison, impose new conditions on the releasee, or allow conditional release to continue.

The Department of Corrections has indicated that, as of 7/1/03, there were 3,092 conditional releasees under active supervision of the Department of Corrections. Of these, 33 committed a sex offense against a minor victim and fit the criteria for application of the proposed new condition of supervision.

### The Effects of HB 87

HB 87 specifies that certain sex offenders who are under conditional release and whose victims are under 18 years of age cannot live within 2 miles of a school or 1,000 feet of a "*designated public school bus stop*". The bill provides that a conditional releasee who is subject to the provisions of the bill may not relocate to a residence that is within 1,000 feet of a public school bus stop. If, on the effective date of the bill, any public school bus stop is located within 1,000 feet of the existing residence of a releasee, the district school board will be required to relocate the school bus stop. After the effective date of the bill, a district school board will be prohibited from establishing a school bus stop within 1,000 feet of the existing residence of a releasee.

The bill requires the Department of Corrections to notify affected school districts of the residence of a releasee 30 days before the release of an offender on conditional release and within 30 days after that releasee relocates.

The bill also clarifies that the failure of the district school board to comply with this provision may not result in a violation of conditional release supervision.

### Unlawful place of residence for persons convicted of certain sex offenses

Currently, there are no restrictions on where a sex offender who is not under supervision by the Department of Corrections can reside.<sup>5</sup> HB 87 creates a new section of statute which makes it unlawful for a person who is convicted of an enumerated sexual offense<sup>6</sup> committed after October 1, 2004 against a victim less than 16 years to reside within 2 miles of any school, or 1,000 feet of a day care center, park or playground. The offense is a third degree felony if the prior conviction for a sexual offense was a felony of the first degree or higher. The offense is a first degree misdemeanor if the prior conviction for a sexual offense was a second or third degree felony.

#### C. SECTION DIRECTORY:

Section 1: Amending s. 947.1405, F.S., relating to conditional release program; adding to condition of release for certain sexual offenders a prohibition against residing within 2 miles of a school or 1,000 feet of a school bus stop.

Section 2: Creating s. 794.065, F.S., making it unlawful for persons convicted of certain sexual offenses to live within 2 miles of a school or within 1,000 feet of day care center, park or playground.

Section 3: Providing effective date.

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<sup>4</sup> s. 947.141, F.S.

<sup>5</sup> Offenders who are considered a "sexual predator" or a "sexual offender" as provided in statute, are required to notify the sheriff within 48 hours of a change in residence. Sections 775.21(6) and 943.0435, F.S. Failure to do so is a third degree felony.

<sup>6</sup> Offenses include violations of ss. 794.011, 794.05, 800.04, 827.071 and 847.0145.



## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See fiscal comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues: None.**

#### **2. Expenditures: None.**

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

If a person is convicted of a sexual offense against a victim under the age of 16 after October 1, 2004 and resides in a location within 2 miles of a school, or 1,000 feet of a day care, playground or park, that offender would have to move out of his or her residence in order to avoid committing a criminal offense.

### **D. FISCAL COMMENTS:**

By placing restrictions on where certain offenders on conditional release and certain convicted felons can live, there may be additional revocations of conditional release and convictions that may result in an unspecified number of offenders returning to or entering prison.

Pursuant to discussions with the Department of Corrections on 3/30/04, the Committee Substitute as adopted alleviated their additional workload requirements and concerns.

Because school districts will be prohibited from placing or relocating a school bus stop within 1,000 feet of the residence of an offender, there may be additional workload on staff to develop alternative locations for bus stops. The fiscal impact of this workload is indeterminate.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law. Moreover, it does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

#### **2. Other: None.**

### **B. RULE-MAKING AUTHORITY: The bill does not confer any rulemaking authority.**

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Committee on Education K-20 adopted 5 amendments to the bill on March 8, 2004.

The amendments provide that the Department of Corrections will notify each affected school district 30 days prior to the date a releasee is released of the residence of the releasee and within 30 days of the date a releasee relocates within a district.

They also remove the requirement that school districts provide the Department of Corrections with the location of all bus stops in each district.

Finally, the amendments change the distance from which a releasee or a person who is convicted of a violation of ss. 794.011, 800.04, 827.071, or 847.0145 in which the victim was younger than 16 years of age may live from a school from 1,000 feet to 2 miles.

This analysis is drawn to the amendments.

HB 87

2004  
CS

CHAMBER ACTION

The Committee on Education K-20 recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to sexual offenders; amending s. 947.1405, F.S.; prohibiting certain sexual offenders subject to conditional release supervision from living within a specified distance of public schools and certain places where children congregate; prohibiting district school boards from establishing school bus stops within 1,000 feet of the existing residence of persons prohibited from living within 1,000 feet of a school bus stop; requiring the Department of Corrections to notify each school district within a specified time period of the location of the residence of a sexual offender subject to conditional release supervision; providing that failure of the district to comply with such provision shall not result in a violation by the resident; providing penalties; creating s. 794.065, F.S.; prohibiting persons convicted of certain sex crimes from residing within 2 miles of a school or within 1,000 feet of a day care center, park, or

HB 87

2004  
CS

playground; providing penalties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (7) of section 947.1405, Florida Statutes, is amended to read:

947.1405 Conditional release program.--

(7)(a) Any inmate who is convicted of a crime committed on or after October 1, 1995, or who has been previously convicted of a crime committed on or after October 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is subject to conditional release supervision, shall have, in addition to any other conditions imposed, the following special conditions imposed by the commission:

1. A mandatory curfew from 10 p.m. to 6 a.m. The commission may designate another 8-hour period if the offender's employment precludes the above specified time, and such alternative is recommended by the Department of Corrections. If the commission determines that imposing a curfew would endanger the victim, the commission may consider alternative sanctions.

2. If the victim was under the age of 18, a prohibition on living within 2 miles of a school or within 1,000 feet of a school, day care center, park, playground, designated public school bus stop, or other place where children regularly congregate. A releasee who is subject to the provisions of this subparagraph may not relocate to a residence that is within 1,000 feet of a public school bus stop. Beginning October 1,

HB 87

2004  
CS

2004, neither the commission nor the department shall approve a residence that is located within 2 miles of a school or within 1,000 feet of a day care center, park, playground, designated school bus stop, or other place where children regularly congregate for any releasee who is subject to the provisions of this subparagraph. On October 1, 2004, the department shall notify each affected school district of the location of the residence of a releasee 30 days prior to release and shall thereafter notify any affected school district of the residence of a releasee if the releasee relocates to a new residence within 30 days after relocation. If, on October 1, 2004, any public school bus stop is located within 1,000 feet of the existing residence of such releasee, the district school board shall relocate such school bus stop. Beginning October 1, 2004, a district school board shall not establish or relocate a public school bus stop within 1,000 feet of the existing residence of a releasee who is subject to the provisions of this subparagraph. The failure of the district school board to comply with the provisions of this subparagraph shall not result in a violation of conditional release supervision.

3. Active participation in and successful completion of a sex offender treatment program with therapists specifically trained to treat sex offenders, at the releasee's own expense. If a specially trained therapist is not available within a 50-mile radius of the releasee's residence, the offender shall participate in other appropriate therapy.

4. A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved

HB 87

2004  
CS

by the victim, the offender's therapist, and the sentencing court.

5. If the victim was under the age of 18, a prohibition against direct contact or association with children under the age of 18 until all of the following conditions are met:

a. Successful completion of a sex offender treatment program.

b. The adult person who is legally responsible for the welfare of the child has been advised of the nature of the crime.

c. Such adult person is present during all contact or association with the child.

d. Such adult person has been approved by the commission.

6. If the victim was under age 18, a prohibition on working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate, as prescribed by the commission.

7. Unless otherwise indicated in the treatment plan provided by the sexual offender treatment program, a prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

8. A requirement that the releasee must submit two specimens of blood to the Florida Department of Law Enforcement to be registered with the DNA database.

HB 87

2004  
CS

9. A requirement that the releasee make restitution to the victim, as determined by the sentencing court or the commission, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.

10. Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

Section 2. Section 794.065, Florida Statutes, is created to read:

794.065 Unlawful place of residence for persons convicted of certain sex offenses.--

(1) It is unlawful for any person who has been convicted of a violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, to reside within 2 miles of any school or within 1,000 feet of any day care center, park, or playground. A person who violates this section and whose conviction for s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 was classified as a felony of the first degree or higher commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this section and whose conviction for s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 was classified as a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) This section shall apply to any person convicted of a violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 for offenses that occur on or after October 1, 2004.

HB 87

2004  
CS

134      Section 3.   This act shall take effect October 1, 2004.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 101 w/CS                      Fire Prevention & Control  
**SPONSOR(S):** Quinones & others  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	6 Y, 0 N	Cole	De La Paz
2) Public Safety & Crime Prevention	15 Y, 0 N w/CS	Cole	De La Paz
3) Insurance	19 Y, 0 N w/CS	Cheek	Cooper
4) Public Safety Appropriations		Davis	DeBeaugrine
5) Appropriations			

### SUMMARY ANALYSIS

The State Fire Marshal does not have the authority to promulgate a rule to force all local fire marshals to create a permitting process. They do have the authority to regulate fire extinguisher and equipment dealers and firefighters, but not local fire marshals. Each individual city and county fire department is governed by statute, but is not responsible to the State Fire Marshal.

Current state law does not require vendors, owners, or operators of facilities to obtain permits from the local or State Fire Marshal prior to fireworks or pyrotechnics being used indoors. The bill amends current law to make it a third-degree felony for any person to initiate an indoor pyrotechnic display in a facility that does not have a fire suppression system installed.

The bill also makes it a third-degree felony for a person who does not have written permission from the owner or operator of the facility, as well as a permit from the local fire marshal having jurisdiction over the facility, to initiate a pyrotechnic display in an indoor facility.

Seasonal fireworks covered by section 791, F.S., are exempt from the bill, as long as they are not used or are not meant to be used indoors.

The bill also provides the Division of the State Fire Marshal the authority to protect fire fighters by implementing certain safety standards as recommended by the National Fire Protection Association Publication 1403. The bill also requires the State Fire Marshal to adopt rules and a curriculum for live-fire training instructors and for live-fire training. If the Division of the State Fire Marshal in the Department of Financial Services (DFS) seizes property, the proceeds accrued under the Contraband Forfeiture Act will be deposited into the Insurance Regulatory Trust Fund, rather than the General Revenue Fund. The proceeds may be used for arson suppression, arson investigation, and funding of anti-arson rewards.

The bill codifies the Fire and Emergency Incident Information Reporting Program (s. 633.115, F.S.) within the Division of State Fire Marshal. The program maintains an electronic communication system capable of transmitting fire and emergency incident information to and between fire protection agencies. The bill also creates a technical advisory panel utilizing existing members from the Firefighters Employment, Standards, and Training Council.

The bill does not appear to have any additional fiscal impact other than the cost of the permit and complying with safety protocols.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0101f.ap.doc  
**DATE:** March 30, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill does not reduce government because local and State Fire Marshals will have increased permitting and inspecting duties.

The bill does not expand individual freedom because it creates a layer of regulation in an attempt to protect the public as a whole.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

On February 20, 2003, approximately 100 people were killed and over 200 others injured in a nightclub fire in West Warwick, Rhode Island. The fire was caused by pyrotechnics being set off indoors without the proper fire protection and prevention equipment. The bill is an attempt to reduce the possibility of that type of incident occurring in this state.

In July of 2002, Lt. John Mickel and Firefighter Dallas Begg of the Osceola County Fire Department died of thermal burns and smoke inhalation while participating in a training exercise at the old Florida Bible College in Kissimmee. Lt. Mickel was an 11-year veteran, while Firefighter Begg had only been with the department for 6 months. The firefighters were the lead crew in the training exercise when a flashover occurred and the roof collapsed on them.

##### Major Changes to Current Law

The bill codifies (s. 633.115, F.S.) the Fire and Emergency Incident Information Reporting Program within the Division of State Fire Marshal, Department of Financial Services (DFS). The program maintains an electronic communication system capable of transmitting fire and emergency incident information to and between fire protection agencies. The bill also creates a technical advisory panel utilizing existing members from the Firefighters Employment, Standards, and Training Council.

Section 633.171, F.S., currently outlines the penalties for failure to obey a State Fire Marshal's order, as well as the penalties for other violations in relation to fire extinguishers, pre-engineered systems, and licenses and/or permits. There is no current requirement in state law requiring owners or operators to obtain permits from the State Fire Marshal before using pyrotechnics indoors. The State Fire Marshal is currently in the process of promulgating a rule to require the office to issue a permit for indoor fireworks or pyrotechnics if they are to be used on state-owned property or in a state building.

The bill amends current law to make it a third-degree felony for any person to initiate an indoor pyrotechnic display in a facility that does not have a fire suppression system installed.

The bill also makes it a third-degree felony for a person who does not have written permission from the owner or operator of the facility, as well as a permit from the local fire marshal having jurisdiction over the facility, to initiate a pyrotechnic display in an indoor facility.

The bill specifically exempts seasonal fireworks regulated under chapter 791, F.S., from this law if they are not used, or intended to be used, within an indoor facility.

The bill provides the Division of the State Fire Marshal the authority to protect firefighters by implementing certain safety standards, as recommended by the National Fire Protection Association Publication 1403, regarding more training and education in safety procedures and establishing safe working conditions.

If the Division of the State Fire Marshal in DFS seizes property, the proceeds accrued under the Contraband Forfeiture Act will be deposited into the Insurance Regulatory Trust Fund, rather than the General Revenue Fund. The proceeds may be used for arson suppression, arson investigation, and funding of anti-arson rewards.

#### C. SECTION DIRECTORY:

Section 1: Creates s. 633.115, F.S., relating to the Florida Fire and Emergency Incident Information Reporting Program.

Section 2: Amends s. 633.171, F.S., relating to the obtaining of permits from local fire marshals by vendors or licensees when fireworks or pyrotechnics are to be used indoors.

Section 3: Amends s. 633.821, F.S., by adding the National Fire Protection Association, Inc., Publication 1403 to the approved list of publications to use to make firefighter working conditions safer.

Section 4: Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There does not appear to be any fiscal impact to the private sector other than the cost of the permit and complying with safety protocols.

#### D. FISCAL COMMENTS:

Pursuant to discussions with Randall Napoli at the Department of Financial Services on 3/30/04, DFS currently has a reporting program in place, including positions and the required electronic communication system. This bill codifies an existing program in DFS and will not attribute any additional costs to the department.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The term "fire suppression system" is not defined in the bill or in statute. However, "fire protection system" is defined in s. 633.021(8), F.S. Specifically, a "fire protection system" is a system individually designed to protect the interior or exterior of a specific building, structure, or other special hazard, from fire. Such systems include, but are not limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, CO2 systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems used for fire protection use. Such systems also include any overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, airlines, thermal systems used in connection with fire sprinkler systems, and tanks and pumps connected to fire sprinkler systems.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Public Safety & Crime Prevention Committee adopted a strike-all amendment that makes it a third-degree felony to initiate a pyrotechnic display in an indoor facility that has no fire suppression system and to initiate a pyrotechnic display indoors without written permission from the owner or operator and a permit from the local authority having jurisdiction over the venue. The amendment also requires the State Fire Marshal to promulgate rules and procedures for live-fire training exercises and develop a training and certification process for live-fire instructors that all fire departments must follow.

The Insurance Committee adopted a strike-all that incorporates everything in the committee substitute and, also:

- Creates the Fire and Emergency Incident Information Reporting Program within the Division of State Fire Marshal. The program establishes and maintains an electronic communication system capable of transmitting fire and emergency incident information to and between fire protection agencies. The amendment also creates a technical advisory panel utilizing existing members from the Firefighters Employment, Standards, and Training Council.
- Provides that when property is forfeited, if the Division of the State Fire Marshal in DFS is the seizing agency, the proceeds accrued under the Contraband Forfeiture Act will be deposited into the Insurance

Regulatory Trust Fund, rather than the General Revenue Fund, to be used for arson suppression, arson investigation, and funding of anti-arson rewards.

- Makes a technical correction when referencing the manual of the National Fire Prevention Association, Inc.

HB 101 CS

2004  
CS

## CHAMBER ACTION

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1 The Committee on Insurance recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to fire prevention and control; creating  
7 s. 633.115, F.S.; creating the Fire and Emergency Incident  
8 Information Reporting Program within the Division of State  
9 Fire Marshal; providing program requirements; providing  
10 duties of the division relating to the program; creating  
11 the Fire and Emergency Incident Information System  
12 Technical Advisory Panel within the division; providing  
13 for membership and duties of the panel; amending s.  
14 633.171, F.S.; providing criminal penalties for initiating  
15 a pyrotechnic display in an indoor facility under certain  
16 circumstances; providing an exception; amending s.  
17 633.821, F.S.; providing additional criteria for certain  
18 rules of the Division of State Fire Marshal; requiring the  
19 division to adopt rules relating to live fire training;  
20 providing requirements; providing for such rules to take  
21 effect; requiring state certification as an instructor for  
22 certain training after a certain date; providing an  
23 exception from application to certain wildland training;

HB 101 CS

2004  
CS

amending s. 932.7055, F.S.; providing that proceeds from the sale of certain forfeited property be deposited into the Insurance Regulatory Trust Fund and used for specified purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 633.115, Florida Statutes, is created to read:

633.115 Fire and Emergency Incident Information Reporting Program; duties; fire reports.--

(1)(a) The Fire and Emergency Incident Information Reporting Program is created within the Division of State Fire Marshal. The program shall:

1. Establish and maintain an electronic communication system capable of transmitting fire and emergency incident information to and between fire protection agencies.

2. Initiate a Fire and Emergency Incident Information Reporting System that shall be responsible for:

a. Receiving fire and emergency incident information from fire protection agencies.

b. Preparing and disseminating annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, fire protection agencies, and, upon request, the public. Each report shall include, but not be limited to, the information listed in the National Fire Incident Reporting System.



HB 101 CS

2004  
CS

51 c. Upon request, providing other states and federal  
52 agencies with fire and emergency incident data of this state.

53 3. Adopt rules to effectively and efficiently implement,  
54 administer, manage, maintain, and use the Fire and Emergency  
55 Incident Information Reporting Program. The rules shall be  
56 considered minimum requirements and shall not preclude a fire  
57 protection agency from implementing its own requirements which  
58 shall not conflict with the rules of the Division of State Fire  
59 Marshal.

60 4. By rule, establish procedures and a format for each  
61 fire protection agency to voluntarily monitor its records and  
62 submit reports to the program.

63 5. Establish an electronic information database, which is  
64 accessible and searchable by fire protection agencies.

65 (b) The Division of State Fire Marshal shall consult with  
66 the Division of Forestry of the Department of Agriculture and  
67 Consumer Services and the Bureau of Emergency Medical Services  
68 of the Department of Health to coordinate data, ensure accuracy  
69 of the data, and limit duplication of efforts in data  
70 collection, analysis, and reporting.

71 (2) The Fire and Emergency Incident Information System  
72 Technical Advisory Panel is created within the Division of State  
73 Fire Marshal. The panel shall advise, review, and recommend to  
74 the State Fire Marshal with respect to the requirements of this  
75 section. The membership of the panel shall consist of the  
76 following 15 members:

77 (a) The current 13 members of the Firefighters Employment,  
78 Standards, and Training Council as established in s. 633.31.

HB 101 CS

2004  
CS

(b) One member from the Division of Forestry of the Department of Agriculture and Consumer Services appointed by the division director.

(c) One member from the Bureau of Emergency Medical Services of the Department of Health, appointed by the bureau chief.

(3) For the purpose of this section, the term "fire protection agency" shall be defined by rule by the Division of State Fire Marshal.

Section 2. Section 633.171, Florida Statutes, is amended to read:

633.171 Penalty for violation of law, rule, or order to cease and desist or for failure to comply with corrective order.--

(1) Any person who violates ~~The violation of~~ any provision of this law, ~~or~~ any order or rule of the State Fire Marshal, or any order to cease and desist or to correct conditions issued under this chapter commits hereunder, ~~shall constitute~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It is ~~shall constitute~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, to intentionally or willfully:

(a) Render a fire extinguisher or preengineered system required by statute or by rule inoperative except during such time as the extinguisher or preengineered system is being serviced, hydrotested, tested, repaired, or recharged, except pursuant to court order.

HB 101 CS

2004  
CS

(b) Obliterate the serial number on a fire extinguisher for purposes of falsifying service records.

(c) Improperly service, recharge, repair, hydrotest, test, or inspect a fire extinguisher or preengineered system.

(d) Use the license or permit number of another person.

(e) Hold a permit and allow another person to use said permit number.

(f) Use, or permit the use of, any license by any individual or organization other than the one to whom the license is issued.

(3) (a) A person who initiates a pyrotechnic display in an indoor facility that does not have a fire suppression system installed in compliance with s. 633.065 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who initiates a pyrotechnic display in an indoor facility without the written consent of the owner or operator of the indoor facility and without a permit issued by the local authority having jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) This subsection does not apply to the manufacture, distribution, sale at wholesale or retail, or seasonal sale of products regulated under chapter 791 if the products are not used in an indoor facility.

Section 3. Subsection (2) of section 633.821, Florida Statutes, is amended, and subsection (6) is added to said section, to read:

HB 101 CS

2004  
CS

633.821 Workplace safety.--

(2) The division shall have the authority to adopt rules for the purpose of ensuring safe working conditions for all firefighter employees by authorizing the enforcement of effective standards, by assisting and encouraging firefighter employers to maintain safe working conditions, and by providing for education and training in the field of safety. Specifically, the division may by rule adopt all or any part of subparts C through T and subpart Z of 29 C.F.R. s. 1910, as revised April 8, 1998; the National Fire Protection Association, Inc., Standard 1500, paragraph 5-7 (Personal Alert Safety System) (1992 edition); the National Fire Protection Association, Inc., Publication 1403, Standard on Live Fire Training Evolutions (latest edition), as limited by subsection (6); and ANSI A 10.4-1990.

(6)(a) The division shall adopt rules for live fire training that all firefighters subject to this chapter must complete. The division shall also adopt rules for a training and certification process for live fire training instructors.

(b) Such rules for training shall include:

1. Sections of the most current edition of the National Fire Protection Association, Inc., Publication 1402, Guide to Building Fire Service Training Centers, relating to establishing policies and procedures for effective use of such permanent facilities or structures.

2. Sections of the most current edition of the National Fire Protection Association, Inc., Publication 1403, Standard on Live Fire Training Evolutions, excluding, however:

HB 101 CS

2004  
CS

- 163        a. Any chapter entitled "Referenced Publications."
- 164        b. References to the National Fire Protection Association,
- 165 Inc., Publication 1975, Station Uniform.
- 166        c. The National Fire Protection Association, Inc.,
- 167 Publication 1001, or any references to such publication in the
- 168 National Fire Protection Association, Inc., Publication 1975.
- 169        d. Any reference to authority having jurisdiction in the
- 170 National Fire Protection Association, Inc., publication 1403,
- 171 defined as the organization, office, or individual responsible
- 172 for approving equipment, materials, installations, and
- 173 procedures.
- 174        3. A 40-hour training program for live fire training
- 175 instructors including:
- 176            a. Live fire instructional techniques.
- 177            b. Training safety in acquired or permanent facilities or
- 178 props.
- 179            c. Personnel safety.
- 180            d. Exterior props, including, but not limited to, liquid
- 181 petroleum gas, other liquid fuels, and similar props.
- 182        (c) The rules, excluding those pertaining to live fire
- 183 training instructor certification, shall take effect no later
- 184 than January 1, 2005.
- 185        (d) Each live fire training instructor is required to be
- 186 state certified. All live fire training commenced on and after
- 187 January 1, 2006, must be conducted by a certified live fire
- 188 training instructor.
- 189        (e) This subsection does not apply to wildland training
- 190 credentialed through the National Wildfire Coordinating Group by

HB 101 CS

2004  
CS

191 | the Division of Forestry of the Department of Agriculture and  
192 | Consumer Services.

193 |       Section 4. Paragraph (1) is added to subsection (5) of  
194 | section 932.7055, Florida Statutes, to read:

195 |       932.7055 Disposition of liens and forfeited property.--

196 |       (5) If the seizing agency is a state agency, all remaining  
197 | proceeds shall be deposited into the General Revenue Fund.

198 | However, if the seizing agency is:

199 |       (1) The Division of State Fire Marshal in the Department  
200 | of Financial Services, the proceeds accrued under the Florida  
201 | Contraband Forfeiture Act shall be deposited into the Insurance  
202 | Regulatory Trust Fund to be used for the purposes of arson  
203 | suppression, arson investigation, and the funding of antiarson  
204 | rewards.

205 |       Section 5. This act shall take effect upon becoming a law.



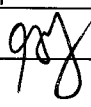
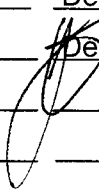
## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 123 Assault or Battery on Officials

**SPONSOR(S):** Cretul

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 678

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Crime Prevention	17 Y, 0 N	Kramer	De La Paz
2) Public Safety Appropriations		Davis 	DeBeaugrine 
3) Appropriations			
4)			
5)			

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### SUMMARY ANALYSIS

Currently, section 784.081, F.S., reclassifies the felony or misdemeanor degree of assault and battery offenses committed against a list of "specified officials or employees." The bill adds "interscholastic sports officials" to the list of specified officials. This will have the effect of increasing the maximum sentence that can be imposed for these offenses. The bill also creates a new misdemeanor offense for battery committed against a sports official.

This bill appears to have an insignificant prison bed impact on the Department of Corrections.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0123b.ap.doc

**DATE:** March 30, 2004



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Section 784.081, F.S., provides that when a person is charged with committing assault<sup>1</sup>, aggravated assault<sup>2</sup>, battery<sup>3</sup> or aggravated battery<sup>4</sup> against a enumerated list of "specified officials or employees", the assault or battery offense is reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Included within the list of specified officials contained in s. 784.081, F.S. are:

Any elected official or employee of:

- a school district,
- a private school,
- the Florida School for the Deaf and the Blind,
- a university developmental research school,
- a state university, or any other entity of the state system of public education, as defined in § 228.041;

<sup>1</sup> An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. § 784.011, F.S.

<sup>2</sup> An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.

<sup>3</sup> A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. § 784.03, F.S.

<sup>4</sup> An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.

- an employee or protective investigator of the Department of Children and Family Services
- an employee of a lead community-based provider and its direct service contract providers.

The offenses are reclassified when the offender knew or had reason to know the status of the victim. Unlike the statute which reclassifies assault and battery offenses committed against a law enforcement officer<sup>5</sup>, section 784.081 does not limit the reclassification to offenses that are committed while the victim is engaged in the performance of his or her duties.

HB 123 will add "*an interscholastic sports official* as defined in s. 440.02(15)(d)11" to the list of specified officials for which enhanced penalties apply. Section 440.02 provides definitions relating to workers' compensation. The referenced sub-paragraph contains language defining the term "employee" to exclude

A person who performs services as a sports official for an entity sponsoring an interscholastic sports event or for a public entity or private, nonprofit organization that sponsors an amateur sports event.....For purposes of this subparagraph, the term "sports official" means any person who is a neutral participant in a sports event, including, but not limited to, umpires, referees, judges, linespersons, scorekeepers, or timekeepers. This subparagraph does not apply to any person employed by a district school board who serves as a sports official as required by the employing school board or who serves as a sports official as part of his or her responsibilities during normal school hours.

The reclassification of assault and battery offenses committed against an interscholastic sports official will have the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a second degree misdemeanor is sixty days incarceration; for a first degree misdemeanor is one year of incarceration; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.<sup>6</sup>

HB 123 also creates a new section of statute which provides that, in addition to any other penalty provided by law, any person who "batters" a sports official, at any level of competition, within the immediate confines or immediate vicinity of the athletic facility at which the athletic contest in which the sports official is an active participant commits a misdemeanor of the first degree. The bill provides that the misdemeanor is punishable by a fine on not more than \$10,000 and a term of imprisonment of not more than 3 years. The bill defines the term "sports official" for the purposes of this section to mean, "any person who serves as a referee, an umpire, or a linesman and any person who serves in a similar capacity as a sports official who may be known by another title, which sports official is duly registered by or is an member of a local, state, regional or national organization that is engaged in part in providing education and training to sports official".

#### C. SECTION DIRECTORY:

Section 1: Amends s. 784.081, F.S.; adding interscholastic sports officials to list of specified officials.

Section 2. Creates s. 784.0815, F.S.; providing penalty for offender who batters a sports official under certain circumstances.

Section 3: Provides effective date.

<sup>5</sup> s.787.07(2), F.S.

<sup>6</sup> s. 775.082, F.S.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The Criminal Justice Estimating Conference met on 2/16/04 and determined that this bill has an insignificant prison bed impact on the Department of Corrections. The bill reclassifies the offenses of battery, assault, aggravated battery and aggravated assault committed against a person officiating an interscholastic activity. As a result, the offenses will have a higher statutory maximum sentence. However, the offenses of aggravated battery and aggravated assault on a specified official are ranked in the same level in the offense severity ranking chart of the Criminal Punishment Code as the corresponding offenses committed against a victim who is not a member of the protected class. Therefore, the bill will not increase the minimum sentence for these aggravated offenses.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

#### **2. Other:**

In 1978, the Florida Supreme Court considered a constitutional challenge to the statute that provided for reclassification of assault and battery offenses against law enforcement officers. The defendant claimed that the statute violated equal protection because it punished "more stringently those who commit assault or battery upon law enforcement officers or firefighters than those who commit the same act upon any other person, without there being any rational basis to support such disparity of treatment." Soverino v. State, 356 So.2d 269, 271 (Fla. 1978). The court held that:

[T]he test to be utilized in examining whether a statutory classification satisfies the Equal Protection Clause is whether it rests on some difference bearing a reasonable relation to the object of the legislation. In [this case], we find that such a reasonable relation exists. The statute *reclassifies the offense only if the law enforcement officer or firefighter "is engaged in the lawful performance of his duties."* Because the public welfare is protected by the performance of these duties, the legislature in its wisdom has chosen to accord greater protection to one who performs these indispensable public services. When an officer is not performing his official duties, he is no longer protecting the public welfare and, consequently, the statute yields him no greater protection than that accorded to members of the general public. Thus, contrary to appellant's assertion that the legislature has created "an elite class of untouchables," in reality it merely has passed a law which fosters the public safety and welfare

Id. at 271-272

At least one court has concluded that the Supreme Court's holding in Soverino was based on the fact that the statute was limited to offenses that occurred while the officer was engaged in the lawful performance of his or her duties. State v. Slaughter, 574 So.2d 218, 220 (Fla.1<sup>st</sup> DCA 1991)("In Soverino, the court found that section 784.07 is constitutional, since it reclassified the offense only if the law enforcement officer or firefighter is engaged in the lawful performance of his duties. In this vein, the statute was deemed reasonably related to the legislative purpose of affording greater protection to the officer or firefighter when the officer or firefighter was engaged in protecting the public welfare.) Unlike the statute which reclassifies assault and battery offenses committed against a law enforcement officer, section 784.081, which is amended by this bill, does not limit the reclassification to offenses that are committed while the victim is engaged in the performance of his or her duties. Because of the basis of the holding in the Soverino case, this statute may be more vulnerable to a constitutional challenge than it would be if the reclassification only applied while the specified official was engaged in the course of his or her duties.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill amends section 784.081 to add "an interscholastic sports official, as defined in s. 440.02(15)(d)11" to the list of specified officials for which an offender who commits a assault of battery against such a victim can receive enhanced penalties. However, the referred section, does not contain a definition of the term "interscholastic sports official". The provision defines what *does not* constitute an employee for the purpose of workers' compensation. The subparagraph does contain a definition of the term "sports official" but, taken alone, that definition appears to be broader than officials who perform their duties for an interscholastic event. Further, the referred subparagraph provides that the subparagraph does not apply to any person employed by a district school board who serves as a sports official as part of his or her responsibilities during normal school hours. It is not clear whether these individuals would be excluded from the term "interscholastic sports official" which is contained in the bill.

Section 2 of the bill creates section 784.0815 which relates to battery on a sports official. The catch-line of the newly created section incorrectly relates to "assault on sports officials." The provision purports to create a misdemeanor of the first degree for battery against a sports official, punishable by a term of imprisonment of not more than 3 years. However, the maximum punishment for a first degree misdemeanor is one year in county jail.<sup>7</sup>

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<sup>7</sup> Section 775.082(4), F.S.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

HB 0123

2004

A bill to be entitled

An act relating to assault or battery on officials;  
amending s. 784.081, F.S.; providing enhanced penalties  
for the offense of assault, battery, aggravated assault,  
or aggravated battery if the offense is committed upon  
certain persons officiating at an interscholastic  
activity; creating s. 784.0815, F.S.; defining "sports  
official"; providing an additional penalty for battery  
upon a sports official under certain circumstances;  
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 784.081, Florida Statutes, is amended  
to read:

784.081 Assault or battery on specified officials or  
employees; reclassification of offenses.--Whenever a person is  
charged with committing an assault or aggravated assault or a  
battery or aggravated battery upon any elected official or  
employee of: a school district; a private school; the Florida  
School for the Deaf and the Blind; a university developmental  
research school; a state university or any other entity of the  
state system of public education, as defined in s. 1000.04; an  
interscholastic sports official, as defined in s.  
440.02(15)(d)11.; an employee or protective investigator of the  
Department of Children and Family Services; or an employee of a  
lead community-based provider and its direct service contract  
providers, when the person committing the offense knows or has  
reason to know the identity or position or employment of the

HB 0123

2004

victim, the offense for which the person is charged shall be reclassified as follows:

(1) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(2) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(3) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(4) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

Section 2. Section 784.0815, Florida Statutes, is created to read:

784.0815 Assault on sports official; definition; additional penalty.--

(1) For the purposes of this section, "sports official" means any person who serves as a referee, an umpire, or a linesman and any person who serves in a similar capacity as a sports official who may be known by another title, which sports official is duly registered by or is a member of a local, state, regional, or national organization that is engaged in part in providing education and training to sports officials.

(2) In addition to any other penalty provided by law, any person who batters a sports official, at any level of competition, within the immediate confines or immediate vicinity of the athletic facility at which the athletic contest in which the sports official is an active participant commits a misdemeanor of the first degree, punishable by a fine of not more than \$10,000 and a term of imprisonment of not more than 3 years.

Section 3. This act shall take effect October 1, 2004.

HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Amendment No.1 (for drafter's use only)

Bill No. HB 123

**COMMITTEE ACTION**

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

**Committee hearing bill:** Public Safety Appropriations

Representative Cretul offered the following:

**Amendment (with directory and title amendments)**

Remove everything after the enacting clause and insert:

Section 1. Section 784.081, Florida Statutes, is amended to read:

784.081 Assault or battery on specified officials or employees; reclassification of offenses.—

(1) For purposes of this section, the term "sports official" means any person who serves as a referee, an umpire, or a linesman and any person who serves in a similar capacity as a sports official who may be known by another title, which sports official is duly registered by or is a member of a local, state, regional, or national organization that is engaged in part in providing education and training to sports officials.

(2) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon any elected official or employee of: a school district; a private school; the Florida School for the Deaf and the Blind; a university developmental research school; a state university or any other entity of the state system of public education, as defined in s. 1000.04; a sports official; an employee or



HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Amendment No.1 (for drafter's use only)

protective investigator of the Department of Children and Family Services; or an employee of a lead community-based provider and its direct service contract providers, when the person committing the offense knows or has reason to know the identity or position or employment of the victim, the offense for which the person is charged shall be reclassified as follows:

(a)-(1) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(b)-(2) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(c)-(3) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(d)-(4) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(3) An assault, aggravated assault, battery or aggravated battery upon a sports official shall only be reclassified pursuant to subsection (2) if such offense is committed upon the sports official when he or she is actively participating as a sports official in an athletic contest or immediately following such athletic contest.

Section 2. This act shall take effect October 1, 2004.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to assault or battery on officials; amending s. 784.081, F.S.; providing enhanced penalties for the offense of assault, battery, aggravated assault, or aggravated battery if the offense is committed upon a sports official; providing an effective date



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 523 w/CS Video Voyeurism

**SPONSOR(S):** Stargel

**TIED BILLS:**

**IDEN./SIM. BILLS:** CS/SB 284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice	5 Y, 0 N	Kramer	De La Paz
2) Public Safety & Crime Prevention	18 Y, 0 N w/CS	Kramer	De La Paz
3) Public Safety Appropriations		Davis	DeBeaugrine
4) Appropriations			
5)			

### SUMMARY ANALYSIS

HB 523 with committee substitute creates the misdemeanor offense of video voyeurism. The bill provides that a person commits the offense of video voyeurism if the offender, for the amusement, entertainment, sexual arousal, gratification or profit of the offender or another, or for the purpose of degrading or abusing another person, intentionally uses or installs or permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy.

Also, the bill provides that a person commits the offense of video voyeurism if the offender, for the amusement, entertainment, sexual arousal, gratification, or profit of the offender or another person, intentionally uses an imaging device to secretly view, broadcast or record under or through the clothing being worn by another person, without that person's knowledge or consent, for the purpose of viewing the body of, or the undergarments worn by, that person. Further, the bill creates the misdemeanor offenses of video voyeurism dissemination and commercial video voyeurism dissemination.

Currently, section 877.26, F.S., makes it a first degree misdemeanor for a merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant's dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy. The bill amends this section to provide that a merchant or merchant's employee does not "directly observe" a customer if the customer knows or has reason to be aware of the presence of the merchant or merchant's employee in the merchant's dressing room, fitting room, changing room or restroom, even when such room provides a reasonable expectation of privacy.

The Criminal Justice Estimating Conference reported this bill appears to have an insignificant impact on prison beds with the Department of Corrections.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0523c.ap.doc

**DATE:** March 30, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

*Current law:* Section 810.14, F.S., provides that a person commits the offense of voyeurism when he or she, with lewd, lascivious or indecent intent, secretly observes, photographs, films, videotapes, or records another person when such other person is in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy. The offense is a first degree misdemeanor. A third conviction for the offense is a third degree felony.

Section 877.26, F.S., makes it a first degree misdemeanor for a merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant's dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy.<sup>1</sup>

*Changes made by HB 523 with committee substitute:* HB 523 amends section 877.26, F.S., to provide that for purposes of the section, a merchant or merchant's employee does not "directly observe" a customer if the customer knows or has reason to be aware of the presence of the merchant or merchant's employee in the merchant's dressing room, fitting room, changing room or restroom, even when such room provides a reasonable expectation of privacy.

The bill creates several offenses relating to "video voyeurism". The bill provides that a person commits the offense of video voyeurism if the offender:

1. For his or her own amusement, entertainment, sexual arousal, gratification or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device<sup>2</sup> to secretly view, broadcast<sup>3</sup>, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body<sup>4</sup>, at a place and time when that person has a reasonable expectation of privacy<sup>5</sup>;

<sup>1</sup> The term "merchant" is defined as an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise. s. 877.26(1), F.S.

<sup>2</sup> The bill defines the term "imaging device" to mean "any mechanical, digital, or electronic viewing device, still camera, camcorder, motion picture camera, or any other instrument, equipment or format capable of recording, storing, or transmitting visual images of another person".

<sup>3</sup> The bill defines the term "broadcast" to mean "electronically transmitting a visual image with the intent that it be viewed by another person".

<sup>4</sup> The bill defines the term "privately exposing the body" to mean "exposing a sexual organ"

<sup>5</sup> The bill defines the term "place and time when a person has a reasonable expectation of privacy" to mean "a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that his or her undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth".

2. For the amusement, entertainment, sexual arousal, gratification or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or
3. For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast or record under or through the clothing being worn by another person, without that person's knowledge or consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

*Video voyeurism dissemination:* The bill provides that a person commits the offense of video voyeurism dissemination if that person, knowing that an image was created in violation of the newly created section, intentionally disseminates, distributes, or transfers the image to another person.

*Commercial video voyeurism dissemination:* The bill provides that a person commits the offense of commercial video voyeurism dissemination if that person:

1. Knowing that an image was created in violation of this section, sells the image for consideration to another person; or
2. Having created the image in violation of this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

The bill provides that a person who violates any of the provisions of the newly created section commits a first degree misdemeanor. Further, a person who violates the section and who has previously been convicted of any violation of the section commits a third degree felony.

The bill also provides that the section does not apply to the following:

1. A law enforcement agency conducting surveillance for a law enforcement purpose;
2. A security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed; or
3. A video surveillance device that is installed and operated in such a manner that the presence of the device is clearly and immediately obvious
4. The dissemination, distribution, or transfer of images subject to the newly created section by a provider of an electronic communication service<sup>6</sup> or a provider of a remote computing service.<sup>7</sup>

*Forfeiture:* The bill amends section 932.701, F.S., to add "any personal property, including but not limited to any imaging device...photograph, film, or other recorded image, including an image recorded

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<sup>6</sup> The bill refers to the definition of the term "electronic communication service" found in 18 U.S.C. s. 2510(15) which defines the term to mean "any service which provides to users thereof the ability to send or receive wire or electronic communications." The term "electronic communication" is defined in 18 U.S.C. s. 2510(12) to mean "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce". The definition contained in the federal code specifies that the definition of "electronic communication" does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from a tracking device or; electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds. However, HB 523 specifies that these exceptions are to be included within the definition of the term electronic communication.

<sup>7</sup> The bill refers to the definition of the term "remote computing service" found in s. 18 U.S.C. 2711(2) which defines the term to mean "the provision to the public of computer storage or processing services by means of an electronic communications system".

on videotape, compact disc, digital tape, or fixed disk" recorded in violation of the newly created video voyeurism statute to the definition of "contraband article" in the Florida Contraband Forfeiture Act.

Currently, section 932.7055, F.S., provides that when a seizing agency obtains a final judgment granting forfeiture of property, it may elect to retain the property for the agency's use, sell the property or salvage, trade or transfer the property to any public or nonprofit organization. The bill amends this section to provide that a seizing agency must destroy any image and the medium on which the image is recorded, including, but not limited to, a photograph, film, or other recorded image, including an image recorded on videotape, compact disc, digital tape, or fixed disk, recorded in violation of the newly created video voyeurism section.

#### C. SECTION DIRECTORY:

**Section 1.** Creates s. 810.145, F.S.; creates offenses relating to video voyeurism.

**Section 2.** Amends s. 877.26, F.S.; relates to direct observation or visual surveillance of customers in merchant's dressing room.

**Section 3.** Amends s. 932.701, F.S.; amends Florida Contraband Forfeiture Act to expand definition of contraband article to include property used in violation of video voyeurism statute.

**Section 4.** Amends s. 932.7055, F.S.; requires seizing agency to destroy images recorded in violation of video voyeurism statute.

**Section 5.** Amends s. 932.707, F.S.; conforming cross-reference.

**Section 6.** Reenacts s. 705.101 for the purpose of incorporating the amendment to section 932.701 by reference.

**Section 7.** Reenacts s. 932.703 for the purpose of incorporating the amendment to section 932.701 by reference.

**Section 8.** Provides effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference met on February 6, 2004, and determined that this bill would likely have an insignificant prison bed impact on the Department of Corrections.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent that businesses are currently selling videotapes that are obtained using methods that will be prohibited under the provisions of this bill, the bill may have a negative fiscal impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Subcommittee on Criminal Justice recommended the adoption of an amendment that made the following changes:

- The amendment changed the definition of the term "privately exposing the body" to mean "exposing a sexual organ".
- The amendment added language creating an exception for the dissemination, distribution or transfer of images by a provider of electronic communication services or remote computing services.
- The amendment also clarified that a first or second violation of the section will be a first degree misdemeanor and the third violation will be a third degree felony.
- The amendment also made several technical changes to conform the language to that of CS/SB 284.

The Committee on Public Safety & Crime Prevention adopted the amendment recommended by the Subcommittee on Criminal Justice. The committee also adopted an amendment to that amendment which made a second violation of the section (rather than a third violation) a third degree felony and made technical changes to the language relating to the exception for the dissemination, distribution or transfer of images by a provider of electronic communication services or remote computing services. The committee also adopted an amendment to section 877.26, F.S. which relates to merchant's observation or surveillance of dressing rooms described in the EFFECT OF PROPOSED CHANGES section above.

HB 523

2004  
CS

## CHAMBER ACTION

1 The Committee on Public Safety & Crime Prevention recommends the  
2 following:

3  
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to video voyeurism; creating s. 810.145,  
8 F.S.; providing definitions; prohibiting a person from  
9 intentionally using or installing, or permitting the use  
10 or installation of, an imaging device to secretly view,  
11 record, or broadcast images of another person for the  
12 purpose of entertainment, sexual arousal, profit, or abuse  
13 when that other person is in a location that provides a  
14 reasonable expectation of privacy; prohibiting a person  
15 from using an imaging device to secretly view, record, or  
16 broadcast images of another person under or through that  
17 other person's clothing for the purpose of viewing that  
18 other person's body or undergarments without the consent  
19 of the person being viewed; prohibiting a person from  
20 disseminating images when the person disseminating the  
21 images knows that the images were recorded in violation of  
22 law; prohibiting a person from selling images to another  
23 for consideration when the person selling the images knows



HB 523

2004  
CS

24        that the images were recorded in violation of law;  
25        prohibiting a person from disseminating images that were  
26        recorded in violation of law to another person for that  
27        person to sell the images to others; providing for certain  
28        exceptions; providing criminal penalties; defining a  
29        previous conviction or adjudication of delinquency;  
30        amending s. 877.26, F.S.; providing circumstances in which  
31        a merchant or a merchant's employee is deemed not to have  
32        directly observed a customer; amending s. 932.701, F.S.;  
33        defining the term "contraband article" to include any  
34        imaging equipment, format, or device used in violation of  
35        law; amending s. 932.7055, F.S.; requiring agencies  
36        seizing images of persons recorded in violation of law to  
37        destroy the images; providing that the seizing agency may  
38        not retain or sell the images; amending s. 932.707, F.S.;  
39        conforming a cross reference; reenacting ss. 705.101(6)  
40        and 932.703(4), F.S., relating to definitions of the terms  
41        "unclaimed evidence" and "contraband article" and the  
42        seizure of a vessel, motor vehicle, aircraft, other  
43        personal property, or real property in or on which a  
44        contraband article is located, to incorporate the  
45        amendment to s. 932.701, F.S., in references thereto;  
46        providing an effective date.

47  
48        Be It Enacted by the Legislature of the State of Florida:

49  
50        Section 1.    Section 810.145, Florida Statutes, is created  
51        to read:

HB 523

2004  
CS

810.145 Video voyeurism.--

(1) As used in this section, the term:

(a) "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person.

(b) "Imaging device" means any mechanical, digital, or electronic viewing device, still camera, camcorder, motion picture camera, or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

(c) "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that his or her undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.

(d) "Privately exposing the body" means exposing a sexual organ.

(2) A person commits the offense of video voyeurism if that person:

(a) For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;

HB 523

2004  
CS

(b) For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge or consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or

(c) For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge or consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

(3) A person commits the offense of video voyeurism dissemination if that person, knowing that an image was created in violation of this section, intentionally disseminates, distributes, or transfers the image to another person.

(4) A person commits the offense of commercial video voyeurism dissemination if that person:

(a) Knowing that an image was created in violation of this section, sells the image for consideration to another person; or

(b) Having created the image in violation of this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

(5) Except for the dissemination, distribution, or transfer of images unrelated to the purpose of security, law enforcement, or surveillance, this section does not apply to:

HB 523

2004  
CS

(a) Any law enforcement agency conducting surveillance for a law enforcement purpose;

(b) Any security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security for the premises;

(c) Any video surveillance device that is installed and operated in such a manner that the presence of the device is clearly and immediately obvious; or

(d) The dissemination, distribution, or transfer of images subject to this section by a provider of an electronic communication service as defined in 18 U.S.C. s. 2510(15), or a provider of a remote computing service as defined in 18 U.S.C. s. 2711(2). For purposes of this section, the exceptions to the definitions of the term "electronic communication" set forth in 18 U.S.C. s. 2510(12)(a), (b), (c), and (d) shall not apply, but rather shall be included within the definition of the term.

(6) Except as provided in subsection (7), a person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) A person who violates this section and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) For purposes of this section, a person has previously been convicted of or adjudicated delinquent for a violation of this section if the violation resulted in a conviction that was

HB 523

2004  
CS

135 sentenced separately, or an adjudication of delinquency entered  
136 separately, prior to the current offense.

137       Section 2.   Section 877.26, Florida Statutes, is amended to  
138 read:

139       877.26   Direct observation, videotaping, or visual  
140 surveillance of customers in merchant's dressing room, etc.,  
141 prohibited; penalties.--

142       (1)   It is unlawful for any merchant to directly observe or  
143 make use of video cameras or other visual surveillance devices  
144 to observe or record customers in the merchant's dressing room,  
145 fitting room, changing room, or restroom when such room provides  
146 a reasonable expectation of privacy. As used in this subsection,  
147 the term "merchant" means an owner or operator, or the agent,  
148 consignee, employee, lessee, or officer of an owner or operator,  
149 of any premises or apparatus used for retail purchase or sale of  
150 any merchandise.

151       (2)   For purposes of this section, a merchant or a  
152 merchant's employee does not directly observe a customer if the  
153 customer knows or has reason to be aware of the presence of the  
154 merchant or the merchant's employee in the merchant's dressing  
155 room, fitting room, changing room, or restroom, even when such  
156 room provides a reasonable expectation of privacy.

157       ~~(3)(2)~~   Any merchant who violates subsection (1) is guilty  
158 of a misdemeanor of the first degree, punishable as provided in  
159 s. 775.082 or s. 775.083.

160       Section 3.   Paragraph (a) of subsection (2) of section  
161 932.701, Florida Statutes, is amended to read:

162       932.701   Short title; definitions.--

HB 523

2004  
CS

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the

HB 523

2004  
CS

felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s. 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any personal property, including, but not limited to, any imaging device used during the course of committing an offense in violation of s. 810.145, photograph, film, or other recorded image, including an image recorded on a videotape, compact disc, digital tape, or fixed disk, recorded in violation of s. 810.145.

Section 4. Present subsections (2) through (8) of section 932.7055, Florida Statutes, are renumbered as subsections (3)

HB 523

2004

CS

218 through (9), respectively, and a new subsection (2) is added to  
219 said section, to read:

220 932.7055 Disposition of liens and forfeited property.--

221 (2) Notwithstanding subsection (1), a seizing agency must  
222 destroy any image and the medium on which the image is recorded,  
223 including, but not limited to, a photograph, videotape,  
224 diskette, compact disc, or fixed disk made in violation of s.  
225 810.145. The agency may not sell or retain any image.

226 Section 5. Section 932.707, Florida Statutes, is amended  
227 to read:

228 932.707 Penalty for noncompliance with reporting  
229 requirements.--Any seizing agency that ~~which~~ fails to comply  
230 with the reporting requirements as described in s.  
231 932.7055(9)(a) ~~s. 932.7055(8)(a)~~, is subject to a civil fine of  
232 \$5,000 payable to the General Revenue Fund. However, such agency  
233 will not be subject to the fine if, within 60 days after ~~of~~  
234 receipt of written notification from the Department of Law  
235 Enforcement of the noncompliance with the reporting requirements  
236 of the Florida Contraband Forfeiture Act, the agency  
237 substantially complies with those ~~said~~ requirements. The  
238 Department of Law Enforcement shall submit any substantial  
239 noncompliance to the Office of the Chief Financial Officer,  
240 which shall be responsible for the enforcement of this section.

241 Section 6. For the purpose of incorporating the amendment  
242 to section 932.701, Florida Statutes, in a reference thereto,  
243 subsection (6) of section 705.101, Florida Statutes, is  
244 reenacted to read:

245 705.101 Definitions.--As used in this chapter:



HB 523

2004  
CS

(6) "Unclaimed evidence" means any tangible personal property, including cash, not included within the definition of "contraband article," as provided in s. 932.701(2), which was seized by a law enforcement agency, was intended for use in a criminal or quasi-criminal proceeding, and is retained by the law enforcement agency or the clerk of the county or circuit court for 60 days after the final disposition of the proceeding and to which no claim of ownership has been made.

Section 7. For the purpose of incorporating the amendment to section 932.701, Florida Statutes, in references thereto, subsection (4) of section 932.703, Florida Statutes, is reenacted to read:

932.703 Forfeiture of contraband article; exceptions.--

(4) In any incident in which possession of any contraband article defined in s. 932.701(2)(a) constitutes a felony, the vessel, motor vehicle, aircraft, other personal property, or real property in or on which such contraband article is located at the time of seizure shall be contraband subject to forfeiture. It shall be presumed in the manner provided in s. 90.302(2) that the vessel, motor vehicle, aircraft, other personal property, or real property in which or on which such contraband article is located at the time of seizure is being used or was attempted or intended to be used in a manner to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of a contraband article defined in s. 932.701(2).

Section 8. This act shall take effect July 1, 2004.

HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 523 CS

**COMMITTEE ACTION**

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

**Committee hearing bill:** Subcommittee on Public Safety

Appropriations

Representative(s) Stargel offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 70-104 and insert:

(2) A person commits the offense of video voyeurism if that person:

(a) For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;

(b) For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or

HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

(c) For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

(3) A person commits the offense of video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner described in this section, intentionally disseminates, distributes, or transfers the image to another person.

(4) A person commits the offense of commercial video voyeurism dissemination if that person:

(a) Knowing or having reason to believe that an image was created in a manner described in this section, sells the image for consideration to another person; or

(b) Having created the image in a manner described in this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

===== T I T L E A M E N D M E N T =====

Remove line(s) 18-26 and insert:

other person's body or undergarments without the knowledge and consent of the person being viewed; prohibiting a person from disseminating images when the person disseminating the images knows that the images were recorded in manner described by section; prohibiting a person from selling images to another for consideration when the person selling the images knows that the images were recorded in manner described by section; prohibiting a person from disseminating images that were recorded in manner described by section to another person for that

HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. 523 CS

**COMMITTEE ACTION**

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

**Committee hearing bill:** Subcommittee on Public Safety

Appropriations

Representative(s) Stargel offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 225 and insert:

810.145, when the image and the medium on which it is recorded  
is no longer needed for an official purpose. The agency may not  
sell or retain any image.

HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. 523 CS

**COMMITTEE ACTION**

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

**Committee hearing bill:** Subcommittee on Public Safety

Appropriations

Representative(s) Stargel offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 137-156 and insert:

Section 2. Section 877.26, Florida Statutes, is amended to read:

877.26 Direct observation, videotaping, or visual surveillance of customers in merchant's dressing room, etc., prohibited; penalties.--

(1) It is unlawful for any merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant's dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy. However, a merchant may directly observe a customer from outside such room if the observation is within the scope of the merchant's duties and the observation does not otherwise violate s. 810.14 or s. 810.145 or if the customer invites or consents to the presence of the merchant in the room.

(2) As used in this subsection, the term "merchant" means an owner or operator, or the agent, consignee, employee, lessee,

HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

or officer of an owner or operator, of any premises or apparatus  
used for retail purchase or sale of any merchandise.

(3)~~(2)~~ Any merchant who violates subsection (1) commits ~~is~~  
~~guilty of~~ a misdemeanor of the first degree, punishable as  
provided in s. 775.082 or s. 775.083.

===== T I T L E   A M E N D M E N T =====

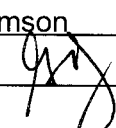
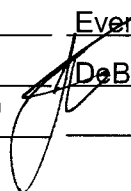
Remove line(s) 30-32 and insert:

amending s. 877.26, F.S.; providing a limited exception to  
a prohibition against a merchant observing customers in  
dressing, fitting, changing or restrooms;



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 545 w/CS Construction managers/State Correctional Facilities  
**SPONSOR(S):** Brown  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Corrections (Sub)</u>	<u>6 Y, 0 N</u>	<u>Whittier</u>	<u>De La Paz</u>
2) <u>Public Safety &amp; Crime Prevention</u>	<u>12 Y, 2 N w/ CS</u>	<u>Whittier</u>	<u>De La Paz</u>
3) <u>State Administration</u>	<u>6 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
4) <u>Public Safety Appropriations</u>	<u></u>	<u>Davis</u> 	<u>DeBeaugrine</u> 
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

HB 545 w/ CS allows the Department of Corrections (DOC or department) to pre-select construction managers for future projects relating to the construction of state correctional facilities, based upon a continuing contract, rather than having to select construction managers utilizing the project-specific process outlined in s. 255.29, F.S.

The bill provides that the advertising requirements currently in statute are to apply to the process for selecting the construction managers. Section 255.0525, F.S., requires that the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 be publicly advertised once in the Florida Administrative Weekly at least 21 days prior to the established bid opening and that the bids or proposals be received and opened publicly at the location, date, and time established in the bid or proposal advertisements.

The fiscal impact of this bill is indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0545e.ap.doc  
**DATE:** March 30, 2004



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

HB 545 w/ CS allows the Department of Corrections (DOC or department) to pre-select construction managers for future projects relating to the construction of state correctional facilities, based upon a continuing contract (similar to architect and engineer selection under s. 287.055, F.S.), rather than having to select construction managers utilizing the project-specific process outlined in s. 255.29, F.S.

Section 255.29, F.S., requires the Department of Management Services (DMS) to establish and adopt by rule, for construction contracts, procedures:

- For determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- For awarding each state agency construction project to the lowest qualified bidder as well as procedures to be followed in cases in which DMS declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of state construction contracts to the lowest qualified bidder.
- To govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of DMS to be in the best interest of the state.
- For entering into performance-based contracts for the development of public facilities when DMS determines the use of such contracts to be in the best interest of the state. The procedures must include, but are not limited to:
  - Prequalification of bidders;
  - Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
  - Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
  - Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

DOC reports that under the amended legislation, it would rank the top firms and that projects would be contracted based either on order of ranking or by lottery process for each project. The objective is to "invest a great deal of time to select qualified firms once for an array of projects, instead of a significant

amount of time for each individual project,” to yield a significant cost avoidance in administrative processing and staff time, and to ensure that qualified contracting firms are available when needed.

DOC further informs that for most of the major construction projects over the last 10 years, construction managers (similar to general contractors) have been selected utilizing DMS Rules 60-D-5.008, 5.0082, and 5.0091. Some of these projects include the Lowell Annex, Okeechobee Correctional Institution, the Dade Annex, Wakulla Correctional Institution, the Desoto Annex, Santa Rosa Correctional Institution, Gulf Annex, and the expansion of Hillsborough Correctional Institution.

The bill states the advertising requirements currently in s. 255.0525, F.S., are to apply to the process for selecting the construction managers. This section of statute requires that the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 be publicly advertised once in the Florida Administrative Weekly, at least 21 days prior to the established bid opening, and that the bids or proposals be received and opened publicly at the location, date and time established in the bid or proposal advertisements.

DOC states all of the construction projects for which construction managers have been used have exceeded \$200,000, and that this procedure takes considerable time and is open to protest that can potentially delay the completion of critically needed prisons. According to DOC, it takes approximately three to three-and-a-half years to build a prison if the department owns the land.

**C. SECTION DIRECTORY:**

**Section 1** amends s. 944.10, F.S., regarding DOC’s responsibility for providing buildings for state correctional facilities.

**Section 2** provides an effective date of July 1, 2004.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. The array of future projects needed for correctional facilities and the amount of contracts with private sector construction managers for future projects in the state is not known.

#### D. FISCAL COMMENTS:

According to the DOC, “[u]ndetermined cost avoidances may be realized from expediting force account projects and avoiding delays in construction. Cost avoidance in administration may also be realized from reduced use of the formal competitive bid process and potential bid protests and administrative hearings.”

However, open market competition is generally regarded as an effective means to controlling costs. To the extent that competition is reduced, the state, through DOC, may not necessarily avoid costs or realize savings. Taking all these factors into account, the fiscal impact of this bill is indeterminate.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **DMS Comments on the Bill as Amended**

The changes allow DOC to select the best qualified for a specific project, which may be a provider on a pre-selected list of qualified providers or from providers responding to a public announcement. The identified change in HB 545, s. 287.055 F.S., is beneficial in that it identifies the top three candidates for negotiations to achieve the best price for the quality output expected from the projects appropriation.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2004, the Subcommittee on Corrections voted the bill favorably based upon assurance from the sponsor that language in the bill requiring DOC to pre-select construction managers for future projects based upon a continuing contract would be replaced with permissive language, so that if there was a need by the department to select a construction manager on a project-specific basis, it would be able to do so. It was agreed that this amendment would be offered at the next committee of reference.

On March 10, 2004, the Committee on Public Safety & Crime Prevention adopted an amendment allowing DOC to select construction managers on either a project-specific or non-project-specific basis, and passed the bill favorably, with CS, based upon assurance from the sponsor that before the next committee of reference hears the bill, the sponsor would consider further amending the language so that it utilizes the term *pre-qualification* of construction managers rather than *pre-selection*. Also, the Chair requested that the sponsor look into incorporating into the bill best value contracting language.

HB 545

2004  
CS

CHAMBER ACTION

The Committee on Public Safety & Crime Prevention recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to selection of construction managers for state correctional facilities construction projects; amending s. 944.10, F.S.; providing that the process for selecting construction managers for state correctional facilities construction projects may be non-project-specific, notwithstanding other provisions of law; providing for the preselection of construction managers for future projects; providing for advertising requirements in connection with the selection of construction managers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 944.10, Florida Statutes, is amended to read:

HB 545

2004  
CS

22           944.10 Department of Corrections to provide buildings;  
23 sale and purchase of land; contracts to provide services and  
24 inmate labor.--

25           (1)(a) It is the intent of the Legislature to expedite the  
26 siting of, acquisition of land for, and construction by the  
27 Department of Corrections of state correctional facilities  
28 operated by the department or a private vendor under contract  
29 with the department. Other agencies shall cooperate with the  
30 department and expeditiously fulfill their responsibilities to  
31 avoid unnecessary delay in the siting of, acquisition of land  
32 for, and construction of state correctional facilities. This  
33 section and all other laws of the state shall be construed to  
34 accomplish this intent. This section shall take precedence over  
35 any other law to the contrary.

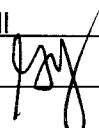
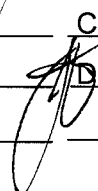
36           (b) Notwithstanding the provisions of s. 255.29, the  
37 process for selecting construction managers for the construction  
38 of state correctional facilities may be non-project-specific in  
39 order to allow preselection of construction managers for future  
40 projects based upon a continuing contract similar to the  
41 selection process used for architects and engineers under s.  
42 287.055. The advertising requirements of s. 255.0525 shall apply  
43 to the process for selecting construction managers for the  
44 construction of state correctional facilities.

45           Section 2. This act shall take effect July 1, 2004.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 719      Law Enforcement Officers/Physicals  
**SPONSOR(S):** Roberson & Macheck  
**TIED BILLS:** None.      **IDEN./SIM. BILLS:** SB 1430 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	7 Y, 0 N	Whittier	De La Paz
2) Public Safety & Crime Prevention	16 Y, 0 N	Whittier	De La Paz
3) Health Care	23 Y, 0 N	Mitchell	Collins
4) Public Safety Appropriations		Davis 	DeBeaugrine 
5) Appropriations			

### SUMMARY ANALYSIS

Currently, under s. 943.13, F.S., law enforcement officers and correctional officers, in order to be eligible for employment or appointment, must have passed a physical exam by a licensed physician or physician's assistant.

HB 719 expands those authorized to conduct this physical to include certified advanced registered nurse practitioners.

The effective date of the bill is July 1, 2004.

This bill appears to have no fiscal impact on the state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0719e.ap.doc  
**DATE:** March 30, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

HB 719 amends s. 943.13, F.S., to expand those authorized to conduct physical examinations of law enforcement officers or correctional officers, prior to employment or appointment, to include advanced registered nurse practitioners (ARNPs).

The effective date of the bill is July 1, 2004.

#### CURRENT SITUATION

##### **Required law enforcement and correctional officer physical examinations**

Section 943.13, F.S., provides minimum qualifications for any person employed or appointed as a law enforcement or correctional officer, including any person employed as an auxiliary correctional officer by a private entity under contract with the Department of Corrections, a county commission, or the Correctional Privatization Commission.

In order to be eligible for employment or appointment, the applicant must have passed a physical exam by a licensed physician or physician's assistant, based on specifications established by the Criminal Justice Standards and Training Commission.

Rule 11B-27.002, F.A.C., requires that a copy of the applicant's position description be reviewed by the physician to ensure that the applicant can meet the physical standards required of the position. The physician's assessment form, or an equivalent form, signed by a physician or physician assistant licensed in the United States or its territories, must be submitted prior to application for certification or reactivation of certification for a law enforcement, correctional, or correctional probation officer.

##### **Advanced Registered Nurse Practitioners (ARNPs)**

Advanced Registered Nurse Practitioners (ARNPs) are registered nurses with advanced master level training and clinical experience that enables them to diagnose and manage most common and many chronic illnesses, either independently or as part of a health care team. A nurse practitioner provides some care previously offered only by physicians, including the ability to prescribe medications under conditions of a protocol established with a physician.

According to the Board of Nursing, most ARNPs are authorized to provide physical examinations and are currently doing so in hospitals, clinics, schools, physicians' offices, and in many other areas. The board reports there are approximately 9,863 ARNPs practicing in Florida.



Section 464.003(c), F.S., provides that the advanced registered nurse practitioner may, in addition to nursing diagnosis and nursing treatment, perform medical diagnosis and treatment, prescription, and operation identified and approved by a joint committee appointed by the Board of Nursing and the Board of Medicine. Approved acts must be performed under general supervision and protocols established with a Medical Doctor, Osteopathic Physician, or Dentist licensed under ch. 458, 459, or 466, F.S. The protocols must identify the medical acts to be performed and the conditions for their performance.

**C. SECTION DIRECTORY:**

**Section 1.** Amends s. 943.13, F.S., regarding officers' minimum qualifications for employment or appointment.

**Section 2.** Provides an effective date of July 1, 2004.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Florida Department of Health anticipates no fiscal impact on the state.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill will provide applicants for law enforcement or correctional officer positions more opportunities to receive physical examinations.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The Criminal Justice Standards and Training Commission already has rule authority pursuant to s. 943.12(1), F.S., to adopt and promulgate amended rule(s) to implement the new language.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

HB 0719

2004

A bill to be entitled

An act relating to law enforcement officers, correctional officers, and correctional probation officers; amending s. 943.13, F.S.; authorizing advanced registered nurse practitioners to conduct required physical exams for such officers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 943.13, Florida Statutes, is amended to read:

943.13 Officers' minimum qualifications for employment or appointment.--On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Correctional Privatization Commission shall:

(6) Have passed a physical examination by a licensed physician, ~~or~~ physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the commission.

Section 2. This act shall take effect July 1, 2004.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 761 w/CS Possession of Firearms  
**SPONSOR(S):** Wishner  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2660

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	6 Y, 0 N	Cole	De La Paz
2) Public Safety & Crime Prevention	16 Y, 0 N w/CS	Cole	De La Paz
3) Public Safety Appropriations		Davis	DeBeaugrine
4) Appropriations			
5)			

### SUMMARY ANALYSIS

Current law prohibits juvenile delinquents who commit felony level offenses from possessing firearms, electric weapons, or tear gas/chemical weapons until they reach the age of 24. If the delinquent is not convicted of a felony after he or she turns 18 years old, then the prohibition against possessing these type of weapons ends at the age of 24. HB 761 extends the prohibition against possessing any of the listed weapons until the person is 34 years of age if the delinquent act that the juvenile committed is among the list of forcible felonies defined in s. 776.08, F.S., which are specified in the bill.

Current law requires that juvenile criminal histories be merged with adult records if the person is charged with, or convicted of, a forcible felony after their 18<sup>th</sup> birthday. This bill requires that all juvenile criminal history records be maintained and merged with adult criminal history records if the offense the juvenile was adjudicated delinquent of was one of a list of forcible felonies which are specified in the bill.

There does not appear to be any fiscal impact to this bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0761c.ap.doc  
**DATE:** March 30, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Section 790.23, F.S., prohibits juvenile delinquents from possessing firearms, electric weapons or devices, and tear gas or chemical weapons if they have been found to have committed a felony until they reach the age of 24. The prohibition ceases to exist at the age of 24 no matter what the felony was that the juvenile committed.

This bill continues the prohibition for an additional ten years, to 34 years of age, if the delinquent act that the juvenile was adjudicated of was any of the following forcible felonies provided in s. 776.08, F.S.: treason, murder, manslaughter, sexual battery, carjacking, robbery, arson, kidnapping, aggravated battery, aggravated stalking, aircraft piracy, and unlawful throwing, placing or discharging of a destructive device or bomb.

This bill also applies if the felony offense(s) were committed in another state, territory, or country.

Section 943.0515(1)(a), F.S., requires that a juvenile delinquent's criminal history be retained for 5 years after their 21<sup>st</sup> birthday if the delinquent has been classified as a serious or habitual juvenile offender or was committed to a juvenile correctional facility. Section 943.0515(2)(a), F.S., requires a juvenile's criminal history be merged with the adult record if they are charged with or convicted of a forcible felony after the age of 18.

This bill would require that a juvenile's criminal history be merged with his or her adult record if the delinquent act that they were adjudicated of was treason, murder, manslaughter, sexual battery, carjacking, robbery, arson, kidnapping, aggravated battery, aggravated stalking, aircraft piracy, and unlawful throwing, placing or discharging of a destructive device or bomb.

The bill will prohibit juvenile delinquents from possessing firearms, electric weapons, and chemical/tear gas weapons to the same extent that adults who are convicted of felonies are under s. 790.23(1)(a-e), F.S.

#### C. SECTION DIRECTORY:

- Section 1:** Amends s. 790.23, F.S., relating felons and delinquents in possession of certain weapons.
- Section 2:** Amends s. 790.06, F.S., relating to the issuance of concealed weapons permits.
- Section 3:** Amends s. 790.065, F.S., relating to the sale and delivery of firearms.
- Section 4:** Amends s. 943.0515, F.S., relating to the retention of criminal history records.
- Section 5:** Reenacts s. 790.01, F.S., relating to carrying concealed weapons.
- Section 6:** Reenacts s. 921.0022, F.S., relating to the criminal punishment code.
- Section 7:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The Department of Juvenile Justice reports that this bill does not appear to have a fiscal impact.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

No exercise of rulemaking authority is necessary to implement the provisions of this bill.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

A strike all amendment was adopted by the Criminal Justice Subcommittee and the Public Safety and Crime Prevention Committee that replaced the language specifying offenses committed with firearms, electric weapons or devices, or chemical /tear gas weapons to offenses classified as a forcible felony under s. 776.08, F.S. to be offenses that would disqualify delinquents from owning a firearm. The strike all amendment also will preclude those juveniles who are adjudicated delinquent for a forcible felony from possessing a firearm until their 34<sup>th</sup> birthday. The current restriction on adjudicated delinquents that prohibits them from possessing firearms until they are 24 years of age will still apply to juveniles adjudicated delinquent for non-forcible felonies. The strike all amendment also requires that any juvenile who has been adjudicated delinquent of a forcible felony shall have his or her juvenile criminal history merged with their adult criminal history.

The Public Safety & Crime Prevention Committee adopted an amendment that removed the crime of "burglary" and "any other felony which involves the use or threat of physical force or violence against any individual" from the list of forcible felonies as defined in s. 776.08, F.S. that will be merged with a delinquents adult criminal history.



HB 761

2004  
CS

## CHAMBER ACTION

1 The Committee on Public Safety & Crime Prevention recommends the  
2 following:

3  
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to possession of firearms, electric  
8 weapons or devices, or concealed weapons by persons found  
9 to have committed certain delinquent acts; amending s.  
10 790.23, F.S.; extending the restriction against possessing  
11 firearms, electric weapons or devices, or concealed  
12 weapons for certain persons found to have committed  
13 delinquent acts involving forcible felony offenses;  
14 providing criminal penalties; amending s. 790.06, F.S.;  
15 revising cross references specifying circumstances  
16 relating to issuance and revocation of license to carry  
17 concealed weapon or firearm, to conform; amending s.  
18 790.065, F.S.; revising a cross reference specifying  
19 circumstances relating to the sale and delivery of  
20 firearms, to conform; amending s. 943.0515, F.S.;  
21 expanding the circumstances in which the criminal history  
22 records of certain minors must be retained as part of the  
23 adult record; reenacting ss. 790.01(5) and 921.0022(3)(e),

HB 761

2004  
CS

F.S., relating to the use of an electric weapon or device or remote stun gun or self-defense chemical spray during the commission of any criminal offense and to the offense severity ranking chart, respectively, to incorporate the amendment to s. 790.23, F.S., in references thereto; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 790.23, Florida Statutes, is amended to read:

790.23 Felons and delinquents; possession of firearms or electric weapons or devices unlawful.--

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(a) Convicted of a felony in the courts of this state;

(b)1. Found, in the courts of this state, to have committed a delinquent act classified as ~~that would be~~ a felony ~~offense if committed by an adult~~ and such person is under 24 years of age; or

2. Found, in the courts of this state, to have committed a delinquent act classified as a forcible felony, as defined in s. 776.08, and such person is under 34 years of age;-

(c) Convicted of or found to have committed a crime against the United States which is designated as a felony;

HB 761

2004

CS

52        (d)1. Found to have committed a delinquent act in another  
53 state, territory, or country classified as ~~that would be~~ a  
54 felony offense ~~if committed by an adult~~ and which was punishable  
55 by imprisonment for a term exceeding 1 year and such person is  
56 under 24 years of age; or

57        2. Found to have committed a delinquent act in another  
58 state, territory, or country that would be classified, if  
59 committed in this state, as a forcible felony, as defined in s.  
60 776.08, and which was punishable by imprisonment for a term  
61 exceeding 1 year and such person is under 34 years of age; or

62        (e) Found guilty of an offense that is a felony in another  
63 state, territory, or country and which was punishable by  
64 imprisonment for a term exceeding 1 year.

65        (2) This section shall not apply to a person convicted of  
66 a felony whose civil rights and firearm authority have been  
67 restored.

68        (3) Any person who violates this section commits a felony  
69 of the second degree, punishable as provided in s. 775.082, s.  
70 775.083, or s. 775.084.

71        Section 2. Paragraph (d) of subsection (2) and paragraph  
72 (c) of subsection (10) of section 790.06, Florida Statutes, are  
73 amended to read:

74        790.06 License to carry concealed weapon or firearm.--

75        (2) The Department of Agriculture and Consumer Services  
76 shall issue a license if the applicant:

77        (d) Is not ineligible to possess a firearm pursuant to s.  
78 790.23 ~~by virtue of having been convicted of a felony;~~

HB 761

2004  
CS

(10) A license issued under this section shall be suspended or revoked pursuant to chapter 120 if the licensee:

(c) ~~Is convicted of a felony which would make the licensee~~ ineligible to possess a firearm pursuant to s. 790.23;

Section 3. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.--

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review criminal history records to determine if the potential buyer or transferee:

1. ~~Has been convicted of a felony and~~ Is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm; or

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred.

Section 4. Paragraph (a) of subsection (1) and subsection (2) of section 943.0515, Florida Statutes, are amended to read:

943.0515 Retention of criminal history records of minors.--

(1)(a) The Criminal Justice Information Program shall retain the criminal history record of a minor who is classified

HB 761

2004  
CS

as a serious or habitual juvenile offender or committed to a juvenile correctional facility or juvenile prison under chapter 985 for 5 years after the date the offender reaches 21 years of age, at which time the record shall be expunged unless any of it meets the criteria specified in subsection (2) applies of ~~paragraph (2)(a) or paragraph (2)(b).~~

(2)(a) If a person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed, the person's record as a minor must be merged with the person's adult criminal history record and must be retained as a part of the person's adult record.

(b) If, at any time, a minor is adjudicated as an adult for a forcible felony, the minor's criminal history record prior to the time of the minor's adjudication as an adult must be merged with his or her record as an adjudicated adult.

(c) If a minor is found to have committed a delinquent act for any of the following forcible felonies enumerated in s. 776.08, the minor's criminal history record for such act must be retained as part of his or her adult record: treason; murder; manslaughter; sexual battery; carjacking; robbery; arson; kidnapping; aggravated battery; aggravated stalking; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

Section 5. For the purpose of incorporating the amendment to section 790.23, Florida Statutes, in a reference thereto, subsection (5) of section 790.01, Florida Statutes, is reenacted to read:

HB 761

2004  
CS

135| 790.01 Carrying concealed weapons.--

(5) This section does not preclude any prosecution for the use of an electric weapon or device or remote stun gun or self-defense chemical spray during the commission of any criminal offense under s. 790.07, s. 790.10, s. 790.23, or s. 790.235, or for any other criminal offense.

141       Section 6. For the purpose of incorporating the amendment  
142 to section 790.23, Florida Statutes, in a reference thereto,  
143 paragraph (e) of subsection (3) of section 921.0022, Florida  
144 Statutes, is reenacted to read:

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145      921.0022  Criminal Punishment Code; offense severity
146  ranking chart.--
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147 | (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	
Statute	Degree	Description

148 (e) LEVEL 5

149	316.027(1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
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150	316.1935 (4)	2nd	Aggravated fleeing or eluding.
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151	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
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152	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
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HB 761

2004

CS

	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
154	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
155	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
156	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
157	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
158	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
159	790.01 (2)	3rd	Carrying a concealed firearm.
160	790.162	2nd	Threat to throw or discharge destructive device.
161	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
162	790.221 (1)	2nd	Possession of short-barreled shotgun or

HB 761

2004  
CS

			machine gun.
163	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
164	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
165	800.04 (7) (c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
166	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
167	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
168	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
169	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
170	812.131 (2) (b)	3rd	Robbery by sudden snatching.
171	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
172			



HB 761

2004

CS

173	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
174	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
175	817.2341 (1) , (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
176	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
177	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
178	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by

HB761

2004  
CS

179	839.13(2)(b)	2nd	a child.
180	843.01	3rd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
181	874.05(2)	2nd	Resist officer with violence to person; resist arrest with violence.
182	893.13(1)(a)1.	2nd	Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.
183	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
184	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

HB 761

2004  
CS

185	893.13(1)(e)2.	2nd	<p>(1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.</p> <p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
186	893.13(1)(f)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.</p>
187	893.13(4)(b)	2nd	<p>Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).</p>
188			
189	Section 7. This act shall take effect October 1, 2004, and		
190	shall apply to offenses committed on or after that date.		



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1641w/CS    Designation and Registration of Sexual Predators  
**SPONSOR(S):** Rep. Adams  
**TIED BILLS:** **IDEN./SIM. BILLS:** HB 2054

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Corrections (Sub)	5 Y, 0 N	Maynard	De La Paz
2) Public Safety & Crime Prevention	19 Y, 0 N w/CS	Maynard	De La Paz
3) Public Safety Appropriations		Davis	DeBeaugrine
4) Appropriations			
5)			

### SUMMARY ANALYSIS

Section 775.21, F.S., provides that persons convicted of certain serious sexual offenses must register as a "sexual predator." Once designated at sentencing as a sexual predator, offenders must comply with certain registration requirements.

Part V of ch. 394, F.S., provides that sexually violent predators may be subject to involuntary civil commitment. Often, sexually violent predators are convicted of the same offenses that would require registration as a sexual predator.

HB 1641 w/CS expands the criteria for sexual predators to include those who have been involuntarily civilly committed as a sexually violent predator under ch. 394, F.S., or in similar proceedings in other states. The bill also requires judges at the time of determination of civil commitment to determine whether a person qualifies as a sexual predator. The clerk is charged with providing a copy of the order to the Department of Corrections. Similarly, DOC is required to notify the state attorneys if a person in its custody qualifies.

The bill provides further that a sexual predator, who fails after vacating a residence to establish or maintain another permanent or temporary residence within 48 hours of vacating the previous residence, must report to the local sheriff's office in the county in which he or she is located. The predator must specify the date he or she vacated the residence, update any registration information, and provide a local address. If a sexual predator gives notice of intent to vacate, but fails to leave, the predator must report in person to the agency he or she previously notified. Failure to comply with this section is a third degree felony.

HB 1641 w/CS also clarifies aspects of the prosecution of acts or omission in violation of the sexual predator act. Acts or omissions may be prosecuted in the county in which they occurred, the county in which the predator was last registered, the county in which the offenses occurred which qualified the person as a sexual predator, or in the county in which he or she was first designated a sexual predator.

This bill appears to have a minimal, if any, fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill does not reduce government or expand individual freedom in that it expands the criteria for which sexually violent predators may have to register following release from involuntary civil commitment.

#### B. EFFECT OF PROPOSED CHANGES:

##### Sexual Predator Registration

Section 775.21, F.S., provides that persons convicted of certain serious sexual offenses must register as a "sexual predator." These offenses include:

- *A capital, life, or first-degree felony violation*, or any attempt thereof, of s. 787.01, F.S. or s. 787.02, F.S., (Kidnapping or False Imprisonment) where the victim is a minor and the defendant is not the victim's parent, or of chapter 794, F.S., (Sexual Battery), s. 800.04, F.S. (Lewd or Lascivious offenses) or s. 847.0145, F.S., (Selling or Buying Minors for Child Pornography) or a violation of a similar law of another jurisdiction; or
- *Any felony violation*, or any attempt thereof, s. 787.01, F.S. or s. 787.02, F.S., (Kidnapping or False Imprisonment) where the victim is a minor and the defendant is not the victim's parent, or of chapter 794, F.S., (Sexual Battery), s. 800.04, F.S. (Lewd or Lascivious offenses) or s. 847.0145, F.S., (Selling or Buying Minors for Child Pornography) or a violation of a similar law of another jurisdiction where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication.

Once designated at sentencing as a sexual predator, offenders must comply with a stringent set of registration requirements. Under s. 775.21(6), F.S., a sexual predator must register with the Department of Corrections the following information:

Name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, photograph, address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box, date and place of any employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address.

If an offender is not under the supervision of the Department of Corrections or within the custody of a private corrections facility, the offender must register with the department or with his or her local sheriff's office within 48 hours of establishing permanent or temporary residence in the state.<sup>1</sup> Sexual Predators must also register with the Department Motor Vehicles and obtain a driver's license or identification card.<sup>2</sup>

<sup>1</sup> Section 775.21(6)(e), F.S.

<sup>2</sup> Section 775.21(6)(f), F.S.

Failure of a sexual predator to register or acquire a driver's license or identification card, or otherwise comply with the section is a third degree felony.

#### Civil Commitment of Sexual Violent Predators

Part V of ch. 394, F.S., provides that sexually violent predators may be subject to involuntary civil commitment. A sexually violent predator is a person convicted of largely the same criteria listed above for a sexual predator. Under this section, notice of a sexual predator's anticipated release from the Department of Corrections or the Department of Juvenile Justice is provided to the state attorney by a specified time period prior to the release (s. 394.913, F.S.). The state attorney is authorized to file a probable cause petition alleging that the person is a "sexually violent predator" for the purposes of qualifying for civil commitment. A hearing before a judge or jury is then held on the issue of whether a person is a sexually violent predator. The standard is clear and convincing evidence and the jury's decision must be unanimous (s. 394.917, F.S.). Upon a verdict that the person is a sexually violent predator, the person is committed to the Department of Children and Families for control, care, and treatment "until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large." (s. 394.917, F.S.)

#### HB 1641

HB 1641 w/CS clarifies aspects of the Sexual Predator Act. The bill provides that "a conviction for similar offenses" to those provided in Florida law in other jurisdictions includes a plea of guilty or nolo contendere resulting in a sanction. The term "sanction" is defined in the bill to include "a fine, probation, community control, parole, conditional release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility."

HB 1641 w/CS also expands the criteria for sexual predators to include those who have been involuntarily civilly committed as a sexually violent predator under ch. 394, F.S. The bill also requires judges at the time of determination of civil commitment to determine whether a person qualifies as a sexual predator. The clerk is charged with providing a copy of the order to the Department of Corrections. Similarly, DOC is required to notify the state attorney if a person in its custody qualifies.

The bill also provides that the requirement that a sexual predator renew his or her driver's license within 48 hours is without regard to the status of the predator's license or identification card.

The bill provides further that a sexual predator, who fails after vacating a residence to establish or maintain another permanent or temporary residence within 48 hours of vacating the previous residence, must report to the local sheriff's office in the county in which he or she is located. The predator must specify the date he or she vacated the residence, update any registration information, and provide a local address. If a sexual predator gives notice of intent to vacate, but fails to leave, the predator must report in person to the agency he or she previously notified. Failure to comply with this section is a third degree felony.

HB 1641 w/CS also clarifies aspects of the prosecution of acts or omission in violation of the sexual predator act. Acts or omissions may be prosecuted in the county in which they occurred, the county in which the predator was last registered, the county in which the offenses occurred which qualified the person as a sexual predator, or in the county in which he or she was first designated a sexual predator. In addition, the bill provides that an arrest, service of an information, or arraignment for a violation of the act for failure to register, constitutes actual notice of the duty to register. A sexual predator's failure to register following arrest, service or arraignment will constitute a new charge.

#### C. SECTION DIRECTORY:

**Section 1.** Amends and reenacts for the purpose of incorporation s. 775.21, F.S.

**Section 2.** Amends and reenacts for the purpose of incorporation s. 943.0435, F.S.

**Section 3.** Amends s. 944.606, F.S.

**Section 4.** Amends and reenacts for the purpose of incorporation s. 944.607, F.S.

**Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17.** Reenacts for the purpose of incorporation ss. 775.13, 943.0436, 775.24, 947.177, 775.261, 921.0022, 944. 608, 39.806, 63.092, 944.609, 947.1405, 948.12, respectively.

**Section 18.** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The Criminal Justice Estimating Conference has not yet evaluated the prison bed impact of this bill on the Department of Corrections. However, because local and state law enforcement and corrections officials are already responsible for maintaining registration information, there appears to be minimal, if any, fiscal impact.

The Department of Corrections reports its belief that this is a technical glitch bill covering registration of sexual predators and offenders.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill is a criminal law.

2. Other:

Florida's Sexual Predator Act has been constitutionally scrutinized in virtually every possible way and has, with one exception, been found constitutional. See e.g. Therrien v. State, 859 So.2d 585 (Fla 1<sup>st</sup> DCA 2003) (Due process and Privacy) Reyes v. State 854 So.2d 816 (Fla 4<sup>th</sup> DCA 2003) (Procedural Due Process, Separation of Powers) Robinson v. State 804 So.2d 451 (Fla. 4<sup>th</sup> DCA



2001) (Equal Protection) Simmons v. State 753 So.2d 753 (Fla. 4<sup>th</sup> DCA 2000) (Ex Post Facto) Rickman v. State 714 So.2d 538 (Fla. 5<sup>th</sup> DCA 1998) (Double Jeopardy).

The main exception is the case of Espindola v. State, 855 So.2d 1281 (Fla. 3<sup>rd</sup> DCA 2003). In this case the Third District Court of Appeals held that the Florida Sexual Predator Act violated procedural due process, because the automatic criteria provision for determination of who constituted a sexual predator did not afford adequate notice and a right to be heard. Id at 1289. However, it is important to note that two other District Court of Appeals have recently disagreed with the holding in Espindola. Miller v. State, 861 So.2d 1283 (Fla. 5<sup>th</sup> DCA 2004), Martin v. State, 864 So.2d 589 (Fla. 5<sup>th</sup> DCA 2004) and Frazier v. State, 2004 WL 221043 (Fla. 1<sup>st</sup> DCA 2004). The Florida Supreme Court has agreed to hear the Espinolda case and has the final say in matters of state constitutionality has not yet resolved this conflict between the districts.

Another case which has bearing upon the constitutionality of the Florida Sexual Predators Act is State v. Giorgetti SC 02-1812 (Fla 2004) This case held that to prosecute a predator for failure to register without proving actual notice of the registration requirements violated procedural due process. The bill addresses some issues raised in this case by providing that if a person is arrested or served with an information for a charge of failure to register, that such arrest or service constitutes actual notice for a new charge of failure to register should the person not register within 48 hours.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2004, the Corrections Subcommittee voted to favorably recommend the bill with a strike-all amendment. The strike-all amendment incorporates changes recommended by the Florida Department of Law Enforcement. The amendment makes the following changes to bill: 1) removes language allowing for civil commitments in other states to be considered for sexual predator criteria, since other state may utilize other criteria not considered under ch. 394, F.S. 2) provides that a sexual predator who fails to comply with registration requirements may also be prosecuted in the county in which he was designated a sexual predator, 3) removes language which prevented a predator from asserting a defense that he did not have a temporary or permanent residence and therefore was not obligated to register because the bill already addresses this scenario 4) adds language which requires that the predator be advised of his or her obligation to register under s. 944.607(4), F.S.

On March 17, 2004, the Committee on Public Safety & Crime Prevention voted to adopt a committee substitute incorporating the above-described amendment.

HB 1641

2004  
CS

CHAMBER ACTION

The Committee on Public Safety & Crime Prevention recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to the designation and registration of sexual predators and sexual offenders; amending s. 775.21, F.S.; amending the definition of the term "conviction"; providing that an offender who has been designated as a sexually violent predator under the civil commitment proceedings provided in ch. 394, F.S., meets the criteria for designation as a sexual predator under the Florida Sexual Predators Act; providing that such offender shall be subject to the registration and notification requirements of the act; providing that such offender shall be designated a sexual predator pursuant to an order of the committing court; requiring the committing court of such offender to make a written finding that the offender is a sexual predator for purposes of the act; requiring the clerk to transmit a copy of the committing court's order to the Department of Law Enforcement within a time certain; specifying circumstances in which the state

HB 1641

2004  
CS

attorney shall seek a hearing to determine whether the offender's record of civil commitment or criminal record from another jurisdiction meets the criteria for designation as a sexual predator; clarifying circumstances related to the registration requirements applicable to sexual predators; clarifying that registration requirements apply each time the driver's license or identification card of a sexual predator is subject to renewal and also apply after each change in specified information; specifying registration and reporting requirements for sexual predators in circumstances where the predator has vacated or intends to vacate a permanent residence; specifying reporting requirements in circumstances where the sexual predator remains at or returns to a permanent residence; revising and clarifying the circumstances in which criminal penalties apply to sexual predators for acts or omissions related to registration; specifying venue for the prosecution of a sexual predator in circumstances involving acts or omissions concerning the failure to register as required; providing that an arrest, information, complaint, or arraignment related to charges of failure to register constitutes actual notice of the duty to register in certain circumstances; providing that the failure of a sexual predator to immediately register following such notice constitutes grounds for a subsequent charge; requiring any sexual predator who asserts, or intends to assert, a lack of notice of the duty to register as a

HB 1641

2004  
CS

52 defense to a charge of failure to register to immediately  
53 register as required; providing that a sexual predator who  
54 is charged with a subsequent failure to register may not  
55 assert the defense of a lack of notice of the duty to  
56 register; providing that registration following arrest,  
57 service, or arraignment related to a charge of failure to  
58 register is not a defense and does not relieve the sexual  
59 predator of criminal liability for the failure to  
60 register; conforming a cross reference; amending s.  
61 943.0435, F.S.; amending the definition of the term  
62 "convicted"; clarifying that registration requirements  
63 apply each time the driver's license or identification  
64 card of a sexual offender is subject to renewal and also  
65 apply after each change in specified information;  
66 specifying registration and reporting requirements for  
67 sexual offenders in circumstances where the offender has  
68 vacated or intends to vacate a permanent residence;  
69 specifying reporting requirements in circumstances where  
70 the sexual offender remains at or returns to a permanent  
71 residence; revising and clarifying the circumstances in  
72 which criminal penalties apply to sexual offenders for  
73 acts or omissions related to registration; specifying  
74 venue for the prosecution of a sexual offender in  
75 circumstances involving acts or omissions concerning the  
76 failure to register as required; providing that an arrest,  
77 information, complaint, or arraignment related to charges  
78 of failure to register constitutes actual notice of the  
79 duty to register in certain circumstances; providing that

HB 1641

2004  
CS

80        the failure of a sexual offender to immediately register  
81        following such notice constitutes grounds for a subsequent  
82        charge; requiring any sexual offender who asserts, or  
83        intends to assert, a lack of notice of the duty to  
84        register as a defense to a charge of failure to register  
85        to immediately register as required; providing that a  
86        sexual offender who is charged with a subsequent failure  
87        to register may not assert the defense of a lack of notice  
88        of the duty to register; providing that registration  
89        following arrest, service, or arraignment related to a  
90        charge of failure to register is not a defense and does  
91        not relieve the sexual offender of criminal liability for  
92        the failure to register; revising a cross reference;  
93        amending s. 944.606, F.S.; amending the definition of the  
94        term "convicted"; amending s. 944.607, F.S.; amending the  
95        definition of the term "conviction"; clarifying  
96        circumstances relating to the registration requirements  
97        applicable to sexual offenders; revising and clarifying  
98        the circumstances in which criminal penalties apply to  
99        sexual offenders for acts or omissions related to  
100       registration; specifying venue for the prosecution of a  
101       sexual offender in circumstances involving acts or  
102       omissions concerning the failure to register as required;  
103       providing that an arrest, information, complaint, or  
104       arraignment related to charges of failure to register  
105       constitutes actual notice of the duty to register in  
106       certain circumstances; providing that the failure of a  
107       sexual offender to immediately register following such

HB 1641

2004  
CS

108        notice constitutes grounds for a subsequent charge;  
109        requiring any sexual offender who asserts, or intends to  
110        assert, a lack of notice of the duty to register as a  
111        defense to a charge of failure to register to immediately  
112        register as required; providing that a sexual offender who  
113        is charged with a subsequent failure to register may not  
114        assert the defense of a lack of notice of the duty to  
115        register; providing that registration following arrest,  
116        service, or arraignment related to a charge of failure to  
117        register is not a defense and does not relieve the sexual  
118        offender of criminal liability for the failure to  
119        register; reenacting s. 775.21(5)(d) and (6)(l), F.S.,  
120        relating to the Florida Sexual Predators Act, for the  
121        purpose of incorporating the amendments to ss. 943.0435  
122        and 944.607, F.S., in references thereto; reenacting s.  
123        943.0435(5), F.S., relating to sexual offender  
124        registration requirements, for the purpose of  
125        incorporating the amendment to s. 775.21, F.S., in  
126        references thereto; reenacting s. 944.607(9), F.S.,  
127        relating to notification concerning sexual offenders to  
128        the Department of Law Enforcement, for the purpose of  
129        incorporating the amendments to ss. 775.21 and 943.0435,  
130        F.S., in references thereto; reenacting ss. 775.24(2) and  
131        943.0436(2), F.S., relating to the duty of the court to  
132        uphold laws governing sexual predators and sexual  
133        offenders, for the purpose of incorporating the amendments  
134        to ss. 943.0435, 944.606, and 944.607, F.S., in references  
135        thereto; reenacting s. 775.25, F.S., relating to the venue

HB 1641

2004  
CS

for prosecutions of sexual predators for acts or omissions relating to registration requirements, for the purpose of incorporating the amendments to ss. 775.21, 943.0435, 944.606, and 944.607, F.S., in references thereto; reenacting ss. 775.13(5) and 775.261(3)(b), F.S., relating to the registration of convicted sexual predators and sexual offenders and criteria for registration under the Florida Career Offender Registration Act, respectively, for the purpose of incorporating the amendments to ss. 775.21, 943.0435, and 944.607, F.S., in references thereto; reenacting s. 921.0022(3)(f), F.S., relating to the ranking of criminal offenses related to the failure of a sexual offender or sexual predator to register in the offense severity ranking chart of the Criminal Punishment Code, for the purpose of incorporating the amendments to ss. 775.21 and 943.0435, F.S., in references thereto; reenacting s. 944.608(7), F.S., relating to notification to the Department of Law Enforcement of information on career offenders, for the purpose of incorporating the amendments to ss. 775.21 and 944.607, F.S., in references thereto; reenacting ss. 39.806(1)(d), 63.089(4)(b), 63.092(3), 944.609(4), 947.1405(2)(c), and 948.12(3), F.S., relating to grounds for termination of parental rights, findings of abandonment in proceedings to terminate parental rights pending adoption, preliminary studies of the homes of prospective adoptive parents, career offender notification, the conditional release program, and intensive supervision for postprison release

HB 1641

2004  
CS

164        of violent offenders, respectively, for the purpose of  
165        incorporating the amendment to s. 775.21, F.S., in  
166        references thereto; providing an effective date.

167  
168        WHEREAS, the Legislature finds that in order to protect the  
169        public, a system of registration is required for sexual  
170        predators and sexual offenders so that the public and law  
171        enforcement agencies can keep track of the residences of  
172        predators and offenders and possibly prevent future sex crimes  
173        from being perpetrated, and

174        WHEREAS, the Legislature intends to clarify that sexual  
175        predators and sexual offenders are, and have been, required to  
176        register a change of residency when the driver's licenses of  
177        such persons are subject to renewal and also when such persons  
178        have changed places of residence, and

179        WHEREAS, the Legislature finds that gaps in time between  
180        changes in the registered information concerning a sexual  
181        predator or sexual offender weaken the effectiveness of the  
182        registration system and pose a threat to public safety by making  
183        it more difficult to quickly locate sexual predators and sexual  
184        offenders residing in Florida, and

185        WHEREAS, the Legislature finds that persons who commit  
186        sexually based offenses, especially those who have committed  
187        offenses against minors, often pose a high risk of engaging in  
188        sexually based offenses even after being released from  
189        incarceration or commitment, and

190        WHEREAS, the Legislature finds that a small but extremely  
191        dangerous number of sexually violent predators exist who



HB 1641

2004  
CS

192 generally have antisocial personality features that are  
193 unamenable to existing mental illness treatment modalities, and  
194 those features render them likely to engage in criminal,  
195 sexually violent behavior, and

196 WHEREAS, the Legislature finds that the likelihood that  
197 sexually violent predators will engage in repeat acts of  
198 predatory sexual violence is high, and

199 WHEREAS, the Legislature finds that the protection of the  
200 public from persons who commit sexually based offenses,  
201 especially those who are sexually violent predators, is a  
202 paramount government interest, and

203 WHEREAS, the Legislature finds that persons who commit  
204 sexually based offenses have a reduced expectation of privacy  
205 because of the public's interest in public safety and in the  
206 effective operation of government, and

207 WHEREAS, the Legislature finds that releasing information  
208 concerning persons who commit sexually based offenses to law  
209 enforcement agencies and to persons who request such  
210 information, and the release of such information to the public  
211 by a law enforcement agency or public agency, will further the  
212 governmental interests of public safety, and

213 WHEREAS, the Legislature finds that the designation of a  
214 person as a sexual offender or sexual predator is not a sentence  
215 or a punishment but is simply a status that reflects the past  
216 behavior of a person, NOW, THEREFORE,

217

218 Be It Enacted by the Legislature of the State of Florida:

219

HB 1641

2004  
CS

220       Section 1. Paragraph (c) of subsection (2), paragraphs (a)  
221 and (c) of subsection (5), paragraph (g) of subsection (6), and  
222 subsection (10) of section 775.21, Florida Statutes, are  
223 amended, paragraph (d) is added to subsection (4) of said  
224 section, and paragraph (d) of subsection (5) and paragraph (1)  
225 of subsection (6) of said section are reenacted for the purpose  
226 of incorporating the amendments to sections 943.0435 and  
227 944.607, Florida Statutes, in references thereto, to read:

228       775.21 The Florida Sexual Predators Act; definitions;  
229 legislative findings, purpose, and intent; criteria;  
230 designation; registration; community and public notification;  
231 immunity; penalties.--

232       (2) DEFINITIONS.--As used in this section, the term:

233       (c) "Conviction" means a determination of guilt which is  
234 the result of a trial or the entry of a plea of guilty or nolo  
235 contendere, regardless of whether adjudication is withheld. A  
236 conviction for a similar offense includes, but is not limited  
237 to, a conviction by a federal or military tribunal, including  
238 courts-martial conducted by the Armed Forces of the United  
239 States, and includes a conviction or entry of a plea of guilty  
240 or nolo contendere resulting in a sanction in any state of the  
241 United States or other jurisdiction. A sanction includes, but is  
242 not limited to, a fine, probation, community control, parole,  
243 conditional release, control release, or incarceration in a  
244 state prison, federal prison, private correctional facility, or  
245 local detention facility.

246       (4) SEXUAL PREDATOR CRITERIA.--

HB 1641

2004  
CS

(d) An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394 shall be designated as a "sexual predator" under subsection (5) and subject to registration under subsection (6) and community and public notification under subsection (7).

(5) SEXUAL PREDATOR DESIGNATION.--An offender is designated as a sexual predator as follows:

(a)1. An offender who meets the sexual predator criteria described in paragraph (4)(d) is a sexual predator, and the court must make a written finding at the time such offender is determined to be a sexually violent predator under chapter 394 that such person meets the criteria for designation as a sexual predator for purposes of this section. The clerk shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order;

2. An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order; or

3.2- If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender who establishes or maintains a permanent or temporary residence in this state meets the sexual predator criteria described in paragraph (4)(a) or (4)(d)

HB 1641

2004  
CS

275 | because the offender was civilly committed or, committed a  
276 | similar violation in another jurisdiction on or after October 1,  
277 | 1993, the Department of Corrections, the department, or the law  
278 | enforcement agency shall notify the state attorney of the county  
279 | where the offender establishes or maintains a permanent or  
280 | temporary residence of the offender's presence in the community.  
281 | The state attorney shall file a petition with the criminal  
282 | division of the circuit court for the purpose of holding a  
283 | hearing to determine if the offender's record of civil  
284 | commitment or criminal record from another jurisdiction meets  
285 | the sexual predator criteria. If the court finds that the  
286 | offender meets the sexual predator criteria because the offender  
287 | has violated a similar law or similar laws in another  
288 | jurisdiction, the court shall make a written finding that the  
289 | offender is a sexual predator.

290 |  
291 | When the court makes a written finding that an offender is a  
292 | sexual predator, the court shall inform the sexual predator of  
293 | the registration and community and public notification  
294 | requirements described in this section. Within 48 hours after ~~of~~  
295 | the court designating an offender as a sexual predator, the  
296 | clerk of the circuit court shall transmit a copy of the court's  
297 | written sexual predator finding to the department. If the  
298 | offender is sentenced to a term of imprisonment or supervision,  
299 | a copy of the court's written sexual predator finding must be  
300 | submitted to the Department of Corrections.

301 |       (c) If the Department of Corrections, the department, or  
302 | any other law enforcement agency obtains information which

HB1641

2004  
CS

303 indicates that an offender meets the sexual predator criteria  
304 but the court did not make a written finding that the offender  
305 is a sexual predator as required in paragraph (a), the  
306 Department of Corrections, the department, or the law  
307 enforcement agency shall notify the state attorney who  
308 prosecuted the offense for offenders described in subparagraph  
309 (a)1., or the state attorney of the county where the offender  
310 establishes or maintains a residence upon first entering the  
311 state for offenders described in subparagraph (a)3.2. The state  
312 attorney shall bring the matter to the court's attention in  
313 order to establish that the offender meets the sexual predator  
314 criteria. If the state attorney fails to establish that an  
315 offender meets the sexual predator criteria and the court does  
316 not make a written finding that an offender is a sexual  
317 predator, the offender is not required to register with the  
318 department as a sexual predator. The Department of Corrections,  
319 the department, or any other law enforcement agency shall not  
320 administratively designate an offender as a sexual predator  
321 without a written finding from the court that the offender is a  
322 sexual predator.

323 (d) A person who establishes or maintains a residence in  
324 this state and who has not been designated as a sexual predator  
325 by a court of this state but who has been designated as a sexual  
326 predator, as a sexually violent predator, or by another sexual  
327 offender designation in another state or jurisdiction and was,  
328 as a result of such designation, subjected to registration or  
329 community or public notification, or both, or would be if the  
330 person was a resident of that state or jurisdiction, shall

HB 1641

2004  
CS

register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.--

(g)1. Each time a sexual predator's driver's license or identification card is subject to renewal, and, without regard to the status of the predator's driver's license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver's license office, and shall be subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of

HB 1641

2004  
CS

Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section.

2. A sexual predator who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence shall, within 48 hours after vacating the permanent residence, report in person to the department or the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator must provide or update all of the registration information required under paragraph (a). The sexual predator must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence.

3. A sexual predator who remains at a permanent residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. If the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

HB 1641

2004  
CS

387           (1) A sexual predator must maintain registration with the  
388 department for the duration of his or her life, unless the  
389 sexual predator has received a full pardon or has had a  
390 conviction set aside in a postconviction proceeding for any  
391 offense that met the criteria for the sexual predator  
392 designation. However, a sexual predator who was designated as a  
393 sexual predator by a court before October 1, 1998, and who has  
394 been lawfully released from confinement, supervision, or  
395 sanction, whichever is later, for at least 10 years and has not  
396 been arrested for any felony or misdemeanor offense since  
397 release, may petition the criminal division of the circuit court  
398 in the circuit in which the sexual predator resides for the  
399 purpose of removing the sexual predator designation. A sexual  
400 predator who was designated a sexual predator by a court on or  
401 after October 1, 1998, who has been lawfully released from  
402 confinement, supervision, or sanction, whichever is later, for  
403 at least 20 years, and who has not been arrested for any felony  
404 or misdemeanor offense since release may petition the criminal  
405 division of the circuit court in the circuit in which the sexual  
406 predator resides for the purpose of removing the sexual predator  
407 designation. The court may grant or deny such relief if the  
408 petitioner demonstrates to the court that he or she has not been  
409 arrested for any crime since release, the requested relief  
410 complies with the provisions of the federal Jacob Wetterling  
411 Act, as amended, and any other federal standards applicable to  
412 the removal of the designation as a sexual predator or required  
413 to be met as a condition for the receipt of federal funds by the  
414 state, and the court is otherwise satisfied that the petitioner



HB 1641

2004  
CS

is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual predator may again petition the court for relief, subject to the standards for relief provided in this paragraph. Unless specified in the order, a sexual predator who is granted relief under this paragraph must comply with the requirements for registration as a sexual offender and other requirements provided under s. 943.0435 or s. 944.607. If a petitioner obtains an order from the court that imposed the order designating the petitioner as a sexual predator which removes such designation, the petitioner shall forward a certified copy of the written findings or order to the department in order to have the sexual predator designation removed from the sexual predator registry.

The sheriff shall promptly provide to the department the information received from the sexual predator.

(10) PENALTIES.--

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver's license or identification card; who fails to provide required location information or change-of-name information; who fails to make a

HB 1641

2004  
CS

required report in connection with vacating a permanent residence; or who otherwise fails, by act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025, where the victim is a minor and the defendant is not the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s. 796.03; s. 800.04; s. 827.071; s. 847.0133; or s. 847.0145, or a violation of a similar law of another jurisdiction, when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public

HB 1641

2004  
CS

records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) A sexual predator who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator, the county in which he or she was designated a sexual predator, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator.

(e) An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been advised and provided with a copy of his or her statutory obligation to register pursuant to subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

HB 1641

2004  
CS

499        (f) Registration following such arrest, service, or  
500        arraignment is not a defense and does not relieve the sexual  
501        predator of criminal liability for the failure to register.

502        Section 2. Paragraph (b) of subsection (1) and subsections  
503        (3), (4), and (9) of section 943.0435, Florida Statutes, are  
504        amended, and subsection (5) of said section is reenacted for the  
505        purpose of incorporating the amendment to section 775.21,  
506        Florida Statutes, in references thereto, to read:

507        943.0435 Sexual offenders required to register with the  
508        department; penalty.--

509        (1) As used in this section, the term:

510        (b) "Convicted" means that there has been a determination  
511        of guilt as a result of a trial or the entry of a plea of guilty  
512        or nolo contendere, regardless of whether adjudication is  
513        withheld. Conviction of a similar offense includes, but is not  
514        limited to, a conviction by a federal or military tribunal,  
515        including courts-martial conducted by the Armed Forces of the  
516        United States, and includes a conviction or entry of a plea of  
517        guilty or nolo contendere resulting in a sanction in any state  
518        of the United States or other jurisdiction. A sanction includes,  
519        but is not limited to, a fine, probation, community control,  
520        parole, conditional release, control release, or incarceration  
521        in a state prison, federal prison, private correctional  
522        facility, or local detention facility.

523        (3) Within 48 hours after the report required under  
524        subsection (2), a sexual offender shall report in person at a  
525        driver's license office of the Department of Highway Safety and  
526        Motor Vehicles, unless a driver's license or identification card

HB 1641

2004  
CS

527 was previously secured or updated under s. 944.607~~(9)~~. At the  
528 driver's license office the sexual offender shall:

529       (a) If otherwise qualified, secure a Florida driver's  
530 license, renew a Florida driver's license, or secure an  
531 identification card. The sexual offender shall identify himself  
532 or herself as a sexual offender who is required to comply with  
533 this section and shall provide proof that the sexual offender  
534 reported as required in subsection (2). The sexual offender  
535 shall provide any of the information specified in subsection  
536 (2), if requested. The sexual offender shall submit to the  
537 taking of a photograph for use in issuing a driver's license,  
538 renewed license, or identification card, and for use by the  
539 department in maintaining current records of sexual offenders.

540       (b) Pay the costs assessed by the Department of Highway  
541 Safety and Motor Vehicles for issuing or renewing a driver's  
542 license or identification card as required by this section.

543       (c) Provide, upon request, any additional information  
544 necessary to confirm the identity of the sexual offender,  
545 including a set of fingerprints.

546       (4)(a) Each time a sexual offender's driver's license or  
547 identification card is subject to renewal, and, without regard  
548 to the status of the offender's driver's license or  
549 identification card, within 48 hours after any change in the  
550 offender's permanent or temporary residence or change in the  
551 offender's name by reason of marriage or other legal process,  
552 the offender shall report in person to a driver's license  
553 office, and shall be subject to the requirements specified in  
554 subsection (3). The Department of Highway Safety and Motor

HB 1641

2004  
CS

Vehicles shall forward to the department all photographs and information provided by sexual offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in ss. 943.043, 943.0435, and 944.606.

(b) A sexual offender who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence shall, within 48 hours after vacating the permanent residence, report in person to the department or the sheriff's office of the county in which he or she is located. The sexual offender shall specify the date upon which he or she intends to or did vacate such residence. The sexual offender must provide or update all of the registration information required under paragraph (2)(b). The sexual offender must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence.

(c) A sexual offender who remains at a permanent residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported pursuant to paragraph (b) for the purpose of reporting his or her address at such residence. If the sheriff receives the report, the sheriff

HB 1641

2004  
CS

583 shall promptly convey the information to the department. An  
584 offender who makes a report as required under paragraph (b) but  
585 fails to make a report as required under this paragraph commits  
586 a felony of the second degree, punishable as provided in s.  
587 775.082, s. 775.083, or s. 775.084.

588 (5) This section does not apply to a sexual offender who  
589 is also a sexual predator, as defined in s. 775.21. A sexual  
590 predator must register as required under s. 775.21.

591 (9)(a) A sexual offender who does not comply with the  
592 requirements of this section commits a felony of the third  
593 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
594 775.084.

595 (b) A sexual offender who commits any act or omission in  
596 violation of this section may be prosecuted for the act or  
597 omission in the county in which the act or omission was  
598 committed, the county of the last registered address of the  
599 sexual offender, the county in which he or she was designated a  
600 sexual offender, or the county in which the conviction occurred  
601 for the offense or offenses that meet the criteria for  
602 designating a person as a sexual offender.

603 (c) An arrest on charges of failure to register, the  
604 service of an information or a complaint for a violation of this  
605 section, or an arraignment on charges for a violation of this  
606 section constitutes actual notice of the duty to register when  
607 the offender has been advised and provided with a copy of his or  
608 her statutory obligation to register pursuant to subsection (2).  
609 A sexual offender's failure to immediately register as required  
610 by this section following such arrest, service, or arraignment

HB 1641

2004  
CS

611 constitutes grounds for a subsequent charge of failure to  
612 register. A sexual offender charged with the crime of failure to  
613 register who asserts, or intends to assert, a lack of notice of  
614 the duty to register as a defense to a charge of failure to  
615 register shall immediately register as required by this section.  
616 A sexual offender who is charged with a subsequent failure to  
617 register may not assert the defense of a lack of notice of the  
618 duty to register.

619 (d) Registration following such arrest, service, or  
620 arraignment is not a defense and does not relieve the sexual  
621 offender of criminal liability for the failure to register.

622 Section 3. Paragraph (a) of subsection (1) of section  
623 944.606, Florida Statutes, is amended to read:

624 944.606 Sexual offenders; notification upon release.--

625 (1) As used in this section:

626 (a) "Convicted" means there has been a determination of  
627 guilt as a result of a trial or the entry of a plea of guilty or  
628 nolo contendere, regardless of whether adjudication is withheld.  
629 A conviction for a similar offense includes, but is not limited  
630 to, a conviction by a federal or military tribunal, including  
631 courts-martial conducted by the Armed Forces of the United  
632 States, and includes a conviction or entry of a plea of guilty  
633 or nolo contendere resulting in a sanction in any state of the  
634 United States or other jurisdiction. A sanction includes, but is  
635 not limited to, a fine, probation, community control, parole,  
636 conditional release, control release, or incarceration in a  
637 state prison, federal prison, private correctional facility, or  
638 local detention facility.



HB 1641

2004  
CS

Section 4. Paragraph (b) of subsection (1) and subsections (4) and (10) of section 944.607, Florida Statutes, are amended, and subsection (9) of said section is reenacted for the purpose of incorporating the amendments to sections 775.21 and 943.0435, Florida Statutes, in references thereto, to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.--

(1) As used in this section, the term:

(b) "Conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated must register with the Department of Corrections and provide ~~the following~~ information as required by this subsection.

(a) The sexual offender must provide his or her name; date of birth; social security number; race; sex; height; weight;

HB 1641

2004  
CS

667 hair and eye color; tattoos or other identifying marks; and  
668 permanent or legal residence and address of temporary residence  
669 within the state or out of state while the sexual offender is  
670 under supervision in this state, including any rural route  
671 address or post office box. The Department of Corrections shall  
672 verify the address of each sexual offender in the manner  
673 described in ss. 775.21 and 943.0435.

674 (b) If the sexual offender is enrolled, employed, or  
675 carrying on a vocation at an institution of higher education in  
676 this state, the sexual offender must provide the name, address,  
677 and county of each institution, including each campus attended,  
678 and the sexual offender's enrollment or employment status. Each  
679 change in enrollment or employment status shall be reported to  
680 the department within 48 hours after the change in status. The  
681 Department of Corrections shall promptly notify each institution  
682 of the sexual offender's presence and any change in the sexual  
683 offender's enrollment or employment status.

684 (9) A sexual offender, as described in this section, who  
685 is under the supervision of the Department of Corrections but  
686 who is not incarcerated shall, in addition to the registration  
687 requirements provided in subsection (4), register in the manner  
688 provided in s. 943.0435(3), (4), and (5), unless the sexual  
689 offender is a sexual predator, in which case he or she shall  
690 register as required under s. 775.21. A sexual offender who  
691 fails to comply with the requirements of s. 943.0435 is subject  
692 to the penalties provided in s. 943.0435(9).

693 (10) (a) The failure of a sexual offender to submit to the  
694 taking of a digitized photograph, or to otherwise comply with

HB 1641

2004  
CS

the requirements of this section, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual offender who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual offender, the county in which he or she was designated a sexual offender, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual offender.

(c) An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the offender has been advised and provided with a copy of his or her statutory obligation to register pursuant to subsection (4). A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

HB 1641

2004  
CS

(d) Registration following such arrest, service, or  
arraignment is not a defense and does not relieve the sexual  
offender of criminal liability for the failure to register.

Section 5. For the purpose of incorporating the amendments  
to sections 775.21, 943.0435, and 944.607, Florida Statutes, in  
references thereto, subsection (5) of section 775.13, Florida  
Statutes, is reenacted to read:

775.13 Registration of convicted felons, exemptions;  
penalties.--

(5) This section does not apply to an offender:

(a) Who has had his or her civil rights restored;

(b) Who has received a full pardon for the offense for  
which convicted;

(c) Who has been lawfully released from incarceration or  
other sentence or supervision for a felony conviction for more  
than 5 years prior to such time for registration, unless the  
offender is a fugitive from justice on a felony charge or has  
been convicted of any offense since release from such  
incarceration or other sentence or supervision;

(d) Who is a parolee or probationer under the supervision  
of the United States Parole Commission if the commission knows  
of and consents to the presence of the offender in Florida or is  
a probationer under the supervision of any federal probation  
officer in the state or who has been lawfully discharged from  
such parole or probation;

(e) Who is a sexual predator and has registered as  
required under s. 775.21;

HB 1641

2004  
CS

(f) Who is a sexual offender and has registered as required in s. 943.0435 or s. 944.607; or

(g) Who is a career offender who has registered as required in s. 775.261 or s. 944.609.

Section 6. For the purpose of incorporating the amendments to sections 943.0435, 944.606, and 944.607, Florida Statutes, in references thereto, subsection (2) of section 943.0436, Florida Statutes, is reenacted to read:

943.0436 Duty of the court to uphold laws governing sexual predators and sexual offenders.--

(2) If a person meets the criteria in chapter 775 for designation as a sexual predator or meets the criteria in s. 943.0435, s. 944.606, s. 944.607, or any other law for classification as a sexual offender, the court may not enter an order, for the purpose of approving a plea agreement or for any other reason, which:

(a) Exempts a person who meets the criteria for designation as a sexual predator or classification as a sexual offender from such designation or classification, or exempts such person from the requirements for registration or community and public notification imposed upon sexual predators and sexual offenders;

(b) Restricts the compiling, reporting, or release of public records information that relates to sexual predators or sexual offenders; or

(c) Prevents any person or entity from performing its duties or operating within its statutorily conferred authority

HB 1641

2004  
CS

776 as such duty or authority relates to sexual predators or sexual  
777 offenders.

778       Section 7. For the purpose of incorporating the amendments  
779 to sections 943.0435, 944.606, and 944.607, Florida Statutes, in  
780 references thereto, subsection (2) of section 775.24, Florida  
781 Statutes, is reenacted to read:

782       775.24 Duty of the court to uphold laws governing sexual  
783 predators and sexual offenders.--

784       (2) If a person meets the criteria in this chapter for  
785 designation as a sexual predator or meets the criteria in s.  
786 943.0435, s. 944.606, s. 944.607, or any other law for  
787 classification as a sexual offender, the court may not enter an  
788 order, for the purpose of approving a plea agreement or for any  
789 other reason, which:

790       (a) Exempts a person who meets the criteria for  
791 designation as a sexual predator or classification as a sexual  
792 offender from such designation or classification, or exempts  
793 such person from the requirements for registration or community  
794 and public notification imposed upon sexual predators and sexual  
795 offenders;

796       (b) Restricts the compiling, reporting, or release of  
797 public records information that relates to sexual predators or  
798 sexual offenders; or

799       (c) Prevents any person or entity from performing its  
800 duties or operating within its statutorily conferred authority  
801 as such duty or authority relates to sexual predators or sexual  
802 offenders.

HB 1641

2004  
CS

Section 8. For the purpose of incorporating the amendments to sections 775.21, 943.0435, 944.606, and 944.607, Florida Statutes, in references thereto, section 775.25, Florida Statutes, is reenacted to read:

775.25 Prosecutions for acts or omissions.--A sexual predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator or sexual offender, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

Section 9. For the purpose of incorporating the amendments to sections 775.21, 943.0435, and 944.607, Florida Statutes, in references thereto, paragraph (b) of subsection (3) of section 775.261, Florida Statutes, is reenacted to read:

775.261 The Florida Career Offender Registration Act; definitions; criteria; designation; registration; community notification; immunity; penalties.--

(3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.--

(b) This section does not apply to any person who has been designated as a sexual predator and required to register under s. 775.21 or who is required to register as a sexual offender under s. 943.0435 or s. 944.607. However, if a person is no

HB 1641

2004  
CS

longer required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435 or s. 944.607, the person must register as a career offender under this section if the person is otherwise designated as a career offender as provided in this section.

Section 10. For the purpose of incorporating the amendments to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (f) of subsection (3) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.--

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
(f) LEVEL 6		
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Forgery of pedigree papers.
499.0051(4)	2nd	Purchase or receipt of legend drug from unauthorized person.
499.0051(5)	2nd	Sale of legend drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.



HB 1641

2004  
CS

849	775.21(10)	3rd	Sexual predators; failure to register; failure to renew driver's license or identification card.
850	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
851	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
852	784.041	3rd	Felony battery.
853	784.048(3)	3rd	Aggravated stalking; credible threat.
854	784.048(5)	3rd	Aggravated stalking of person under 16.
855	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
856	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
857	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
858	784.081(2)	2nd	Aggravated assault on specified official or employee.
859	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
860			

HB 1641

2004  
CS

861	784.083 (2)	2nd	Aggravated assault on code inspector.
862	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
863	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
864	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
865	790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
866	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
867	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
868	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
869	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.

HB 1641

2004  
CS

870	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
871	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
872	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
873	812.014(2)(b)2.	2nd	Property stolen; cargo valued at less than \$50,000, grand theft in 2nd degree.
874	812.015(9)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
875	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
876	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
877	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
878	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
879			

HB 1641

2004  
CS

	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
880	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
881	825.103 (2) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
882	827.03 (1)	3rd	Abuse of a child.
883	827.03 (3) (c)	3rd	Neglect of a child.
884	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
885	836.05	2nd	Threats; extortion.
886	836.10	2nd	Written threats to kill or do bodily injury.
887	843.12	3rd	Aids or assists person to escape.
888	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
889	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
890	943.0435 (9)	3rd	Sex offenders; failure to comply with

HB 1641

2004  
CS

			reporting requirements.
891	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
892	944.40	2nd	Escapes.
893	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
894	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
895	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

896

897       Section 11. For the purpose of incorporating the

898 amendments to sections 775.21 and 944.607, Florida Statutes, in

899 references thereto, subsection (7) of section 944.608, Florida

900 Statutes, is reenacted to read:

901       944.608 Notification to Department of Law Enforcement of

902 information on career offenders.--

903       (7) A career offender who is under the supervision of the

904 department but who is not incarcerated shall, in addition to the

905 registration requirements provided in subsection (3), register

906 in the manner provided in s. 775.261(4)(c), unless the career

HB 1641

2004  
CS

907 offender is a sexual predator, in which case he or she shall  
908 register as required under s. 775.21, or is a sexual offender,  
909 in which case he or she shall register as required in s.  
910 944.607. A career offender who fails to comply with the  
911 requirements of s. 775.261(4) is subject to the penalties  
912 provided in s. 775.261(8).

913       Section 12. For the purpose of incorporating the amendment  
914 to section 775.21, Florida Statutes, in a reference thereto,  
915 paragraph (d) of subsection (1) of section 39.806, Florida  
916 Statutes, is reenacted to read:

917       39.806 Grounds for termination of parental rights.--

918       (1) The department, the guardian ad litem, or any person  
919 who has knowledge of the facts alleged or who is informed of  
920 those facts and believes that they are true may petition for the  
921 termination of parental rights under any of the following  
922 circumstances:

923       (d) When the parent of a child is incarcerated in a state  
924 or federal correctional institution and either:

925       1. The period of time for which the parent is expected to  
926 be incarcerated will constitute a substantial portion of the  
927 period of time before the child will attain the age of 18 years;

928       2. The incarcerated parent has been determined by the  
929 court to be a violent career criminal as defined in s. 775.084,  
930 a habitual violent felony offender as defined in s. 775.084, or  
931 a sexual predator as defined in s. 775.21; has been convicted of  
932 first degree or second degree murder in violation of s. 782.04  
933 or a sexual battery that constitutes a capital, life, or first  
934 degree felony violation of s. 794.011; or has been convicted of

HB 1641

2004  
CS

an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

Section 13. For the purpose of incorporating the amendment to section 775.21, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 63.089, Florida Statutes, is reenacted to read:

63.089 Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.--

(4) FINDING OF ABANDONMENT.--A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032(1). A finding of abandonment may be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy. If, in the opinion of the court, the

HB1641

2004  
CS

963 efforts of a parent or person having legal custody of the child  
964 to support and communicate with the child are only marginal  
965 efforts that do not evince a settled purpose to assume all  
966 parental duties, the court may declare the child to be  
967 abandoned. In making this decision, the court may consider the  
968 conduct of a father toward the child's mother during her  
969 pregnancy.

970 (b) The child has been abandoned when the parent of a  
971 child is incarcerated on or after October 1, 2001, in a state or  
972 federal correctional institution and:

973 1. The period of time for which the parent is expected to  
974 be incarcerated will constitute a substantial portion of the  
975 period of time before the child will attain the age of 18 years;

976 2. The incarcerated parent has been determined by the  
977 court to be a violent career criminal as defined in s. 775.084,  
978 a habitual violent felony offender as defined in s. 775.084,  
979 convicted of child abuse as defined in s. 827.03, or a sexual  
980 predator as defined in s. 775.21; has been convicted of first  
981 degree or second degree murder in violation of s. 782.04 or a  
982 sexual battery that constitutes a capital, life, or first degree  
983 felony violation of s. 794.011; or has been convicted of an  
984 offense in another jurisdiction which is substantially similar  
985 to one of the offenses listed in this subparagraph. As used in  
986 this section, the term "substantially similar offense" means any  
987 offense that is substantially similar in elements and penalties  
988 to one of those listed in this subparagraph, and that is in  
989 violation of a law of any other jurisdiction, whether that of  
990 another state, the District of Columbia, the United States or



HB 1641

2004  
CS

991 any possession or territory thereof, or any foreign  
992 jurisdiction; or

993       3. The court determines by clear and convincing evidence  
994 that continuing the parental relationship with the incarcerated  
995 parent would be harmful to the child and, for this reason, that  
996 termination of the parental rights of the incarcerated parent is  
997 in the best interest of the child.

998       Section 14. For the purpose of incorporating the amendment  
999 to section 775.21, Florida Statutes, in a reference thereto,  
1000 subsection (3) of section 63.092, Florida Statutes, is reenacted  
1001 to read:

1002       63.092 Report to the court of intended placement by an  
1003 adoption entity; at-risk placement; preliminary study.--

1004       (3) PRELIMINARY HOME STUDY.--Before placing the minor in  
1005 the intended adoptive home, a preliminary home study must be  
1006 performed by a licensed child-placing agency, a child-caring  
1007 agency registered under s. 409.176, a licensed professional, or  
1008 agency described in s. 61.20(2), unless the adoptee is an adult  
1009 or the petitioner is a stepparent or a relative. If the adoptee  
1010 is an adult or the petitioner is a stepparent or a relative, a  
1011 preliminary home study may be required by the court for good  
1012 cause shown. The department is required to perform the  
1013 preliminary home study only if there is no licensed child-  
1014 placing agency, child-caring agency registered under s. 409.176,  
1015 licensed professional, or agency described in s. 61.20(2), in  
1016 the county where the prospective adoptive parents reside. The  
1017 preliminary home study must be made to determine the suitability  
1018 of the intended adoptive parents and may be completed prior to

HB 1641

2004  
CS

1019 identification of a prospective adoptive minor. A favorable  
1020 preliminary home study is valid for 1 year after the date of its  
1021 completion. Upon its completion, a copy of the home study must  
1022 be provided to the intended adoptive parents who were the  
1023 subject of the home study. A minor may not be placed in an  
1024 intended adoptive home before a favorable preliminary home study  
1025 is completed unless the adoptive home is also a licensed foster  
1026 home under s. 409.175. The preliminary home study must include,  
1027 at a minimum:

- 1028       (a) An interview with the intended adoptive parents;
- 1029       (b) Records checks of the department's central abuse  
1030 registry and criminal records correspondence checks pursuant to  
1031 s. 435.045 through the Department of Law Enforcement on the  
1032 intended adoptive parents;
- 1033       (c) An assessment of the physical environment of the home;
- 1034       (d) A determination of the financial security of the  
1035 intended adoptive parents;
- 1036       (e) Documentation of counseling and education of the  
1037 intended adoptive parents on adoptive parenting;
- 1038       (f) Documentation that information on adoption and the  
1039 adoption process has been provided to the intended adoptive  
1040 parents;
- 1041       (g) Documentation that information on support services  
1042 available in the community has been provided to the intended  
1043 adoptive parents; and
- 1044       (h) A copy of each signed acknowledgment of receipt of  
1045 disclosure required by s. 63.085.

1046

HB 1641

2004  
CS

1047 If the preliminary home study is favorable, a minor may be  
1048 placed in the home pending entry of the judgment of adoption. A  
1049 minor may not be placed in the home if the preliminary home  
1050 study is unfavorable. If the preliminary home study is  
1051 unfavorable, the adoption entity may, within 20 days after  
1052 receipt of a copy of the written recommendation, petition the  
1053 court to determine the suitability of the intended adoptive  
1054 home. A determination as to suitability under this subsection  
1055 does not act as a presumption of suitability at the final  
1056 hearing. In determining the suitability of the intended adoptive  
1057 home, the court must consider the totality of the circumstances  
1058 in the home. No minor may be placed in a home in which there  
1059 resides any person determined by the court to be a sexual  
1060 predator as defined in s. 775.21 or to have been convicted of an  
1061 offense listed in s. 63.089(4)(b)2.

1062 Section 15. For the purpose of incorporating the amendment  
1063 to section 775.21, Florida Statutes, in references thereto,  
1064 subsection (4) of section 944.609, Florida Statutes, is  
1065 reenacted to read:

1066 944.609 Career offenders; notification upon release.--

1067 (4) The department or any law enforcement agency may  
1068 notify the community and the public of a career offender's  
1069 presence in the community. However, with respect to a career  
1070 offender who has been found to be a sexual predator under s.  
1071 775.21, the Department of Law Enforcement or any other law  
1072 enforcement agency must inform the community and the public of  
1073 the career offender's presence in the community, as provided in  
1074 s. 775.21.

HB 1641

2004  
CS

1075       Section 16. For the purpose of incorporating the amendment  
1076 to section 775.21, Florida Statutes, in a reference thereto,  
1077 paragraph (c) of subsection (2) of section 947.1405, Florida  
1078 Statutes, is reenacted to read:

1079       947.1405 Conditional release program.--

1080       (2) Any inmate who:

1081       (c) Is found to be a sexual predator under s. 775.21 or  
1082 former s. 775.23,

1083  
1084 shall, upon reaching the tentative release date or provisional  
1085 release date, whichever is earlier, as established by the  
1086 Department of Corrections, be released under supervision subject  
1087 to specified terms and conditions, including payment of the cost  
1088 of supervision pursuant to s. 948.09. Such supervision shall be  
1089 applicable to all sentences within the overall term of sentences  
1090 if an inmate's overall term of sentences includes one or more  
1091 sentences that are eligible for conditional release supervision  
1092 as provided herein. Effective July 1, 1994, and applicable for  
1093 offenses committed on or after that date, the commission may  
1094 require, as a condition of conditional release, that the  
1095 releasee make payment of the debt due and owing to a county or  
1096 municipal detention facility under s. 951.032 for medical care,  
1097 treatment, hospitalization, or transportation received by the  
1098 releasee while in that detention facility. The commission, in  
1099 determining whether to order such repayment and the amount of  
1100 such repayment, shall consider the amount of the debt, whether  
1101 there was any fault of the institution for the medical expenses  
1102 incurred, the financial resources of the releasee, the present

HB 1641

2004  
CS

1103 | and potential future financial needs and earning ability of the  
1104 | releasee, and dependents, and other appropriate factors. If any  
1105 | inmate placed on conditional release supervision is also subject  
1106 | to probation or community control, resulting from a probationary  
1107 | or community control split sentence within the overall term of  
1108 | sentences, the Department of Corrections shall supervise such  
1109 | person according to the conditions imposed by the court and the  
1110 | commission shall defer to such supervision. If the court revokes  
1111 | probation or community control and resentsences the offender to a  
1112 | term of incarceration, such revocation also constitutes a  
1113 | sufficient basis for the revocation of the conditional release  
1114 | supervision on any nonprobationary or noncommunity control  
1115 | sentence without further hearing by the commission. If any such  
1116 | supervision on any nonprobationary or noncommunity control  
1117 | sentence is revoked, such revocation may result in a forfeiture  
1118 | of all gain-time, and the commission may revoke the resulting  
1119 | deferred conditional release supervision or take other action it  
1120 | considers appropriate. If the term of conditional release  
1121 | supervision exceeds that of the probation or community control,  
1122 | then, upon expiration of the probation or community control,  
1123 | authority for the supervision shall revert to the commission and  
1124 | the supervision shall be subject to the conditions imposed by  
1125 | the commission. A panel of no fewer than two commissioners shall  
1126 | establish the terms and conditions of any such release. If the  
1127 | offense was a controlled substance violation, the conditions  
1128 | shall include a requirement that the offender submit to random  
1129 | substance abuse testing intermittently throughout the term of  
1130 | conditional release supervision, upon the direction of the

HB 1641

2004  
CS

correctional probation officer as defined in s. 943.10(3). The commission shall also determine whether the terms and conditions of such release have been violated and whether such violation warrants revocation of the conditional release.

Section 17. For the purpose of incorporating the amendment to section 775.21, Florida Statutes, in a reference thereto, subsection (3) of section 948.12, Florida Statutes, is reenacted to read:

948.12 Intensive supervision for postprison release of violent offenders.--It is the finding of the Legislature that the population of violent offenders released from state prison into the community poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, for the purpose of enhanced public safety, any offender released from state prison who:

(3) Has been found to be a sexual predator pursuant to s. 775.21,

and who has a term of probation to follow the period of incarceration shall be provided intensive supervision by experienced correctional probation officers. Subject to specific appropriation by the Legislature, caseloads may be restricted to a maximum of 40 offenders per officer to provide for enhanced public safety as well as to effectively monitor conditions of electronic monitoring or curfews, if such was ordered by the court.

Section 18. This act shall take effect July 1, 2004.